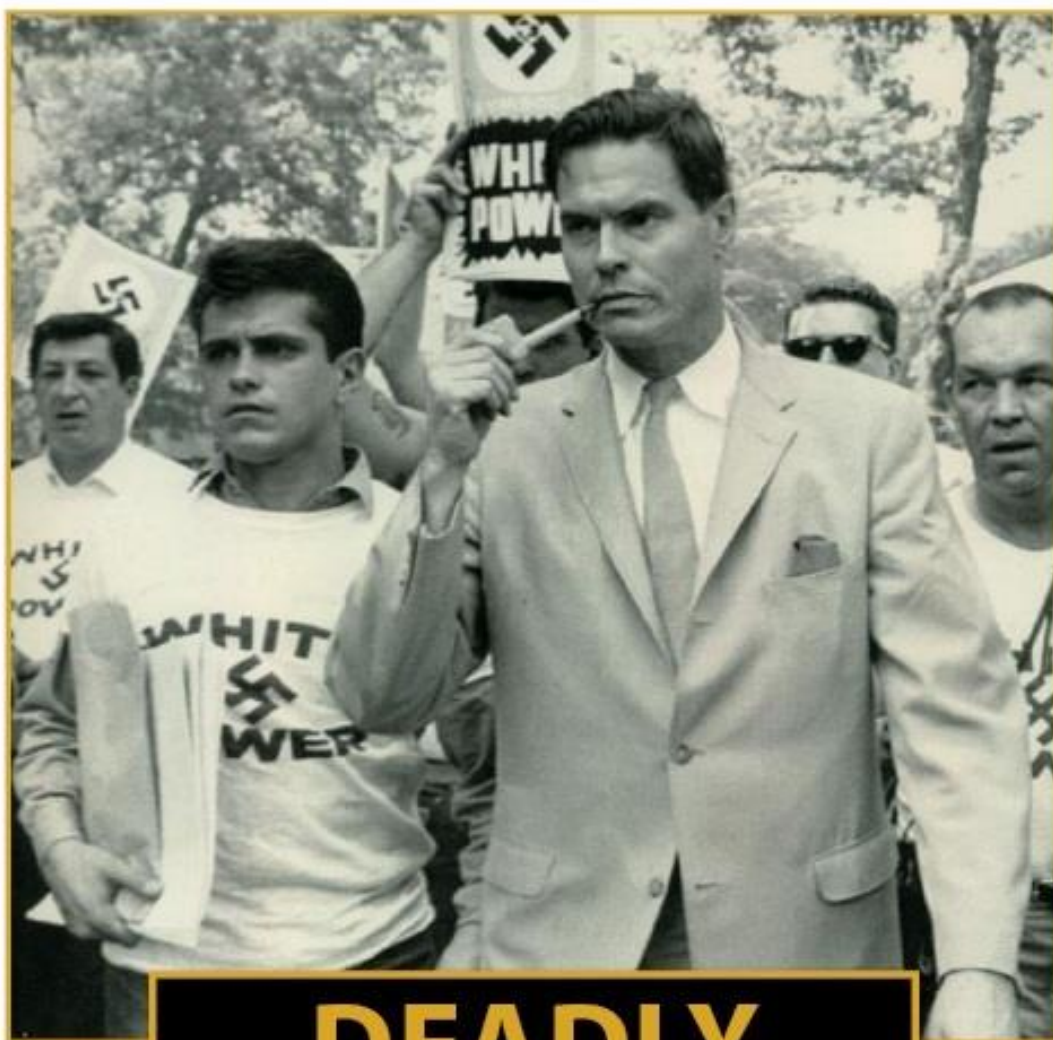




DEADLY FRIENDSHIP

John Patler and the murder
of George Lincoln Rockwell
Volume 2

James Pontolillo

Deadly Friendship:

***John Patler
and the murder of
George Lincoln Rockwell***

Volume 2

Edited by James Pontolillo

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Cover photo: American Nazi Party Commander George Lincoln Rockwell, flanked by his aide-de-camp John C. Patler, leads a march through Chicago's south side on September 10, 1966.

Dedicated to the blessed memory of
my dear wife Julia Jo,
whose feet now tread the lost aeons.

The evil genius must die.

John Patler

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Patler v. Commonwealth of Virginia,
Volume 2 (continued)

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o'clock he still hadn't. No warrant had been obtained until three o'clock. That is what I just established.

Mr. Harrigan: That's not the same thing.

Mr. Hassan: Absolutely. If a man is not charged, he is not served with a warrant.

Mr. Harrigan: All right. May I proceed?

The Court: Go ahead.

By Mr. Harrigan:

Q. Then you took him back to the interrogation room?

A. Interviewing room.

Q. You call it the interviewing room, is that right?

A. Yes, sir.

Q. And that is on the third floor?

A. Yes, sir.

Q. That is the room with the two-way mirror in it?

A. Yes, it is. Yes, sir.

page 929 } Q. Now, did you go in the room with him?

A. Not at that time.

Q. Did anybody else?

A. Not to my knowledge.

Q. Did there come a time when you did go in the room with him?

A. Yes, sir.

Q. What time was that?

A. Five after two.

Q. Did anybody else go in with you?

A. Sergeant Pever.

Q. Anybody else?

A. No, sir.

Q. How about a stenographer?

A. No, sir.

Q. Any reason why you didn't take a stenographer in?

A. The man hadn't been charged and there wasn't any need for a stenographer for statements or anything.

Q. You say the man up to that point hadn't been charged?

A. I hadn't gotten the warrant.

Q. So up to the time when you started to talk to him, you had still not informed him why he was at the police station?

A. He had been informed he was a suspect
page 930 } in a felony.

Q. Okay. Was that the limit of the information you gave him, that he was a suspect in a felony?

A. Yes, sir.

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Q. Did you tell him what felony?

A. No, sir.

Q. Did you tell him what punishment or anything?

A. No, sir.

Q. Then after you informed him he was a suspect for a felony, then did you start asking the questions?

A. No, sir, we told him why he was picked up.

Q. All right. What did you tell him?

A. I told him a felony had been committed and from the information we received over the police radio as far as route of travel or direction of the suspect and from another description we received on a man or subject that eluded the police car. He was in the area and he was picked up as a suspect.

Q. All right. Was that basically what you told him, what you just said?

A. Well, yeah, he was picked up as a suspect.

Q. What was the next question you asked him then?

A. Then he started telling us.

page 931 } Q. Did you ask him something first?

A. Not that I remember.

Q. Did you ask him where he was or anything?

Pever advised him of his rights again?

A. Yes, sir.

Q. Is this at the same time that you were telling him he was a suspect?

A. We told him that.

Q. You told him he was a suspect?

A. Yes, sir.

Q. Did anybody else ask him where he had been earlier, what was he doing up there?

A. He was asked about his whereabouts.

Q. All right.

A. And the condition of being wet.

Q. What did he say again?

A. The whole thing?

Q. Yes.

A. He said that he had an argument with his wife. He didn't know what about, and he left the apartment.

Q. Did he say he didn't know what about?

A. Yes, sir.

Q. All right.

page 932 } A. Then he went for a walk and that he was in the habit of walking a great deal. He walked

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quite a bit, and that he had gotten wet from hitting the bushes with his hands as he walked by and that he hadn't been in Bonair Park. He hadn't *ran* from any scout cars.

Q. Did you ask him whether he was in Bonair Park?

A. I don't remember if we asked him if he was in Bonair Park or whether it was due to the information received over the radio. The suspect was seen in and around Bonair Park, and whether he was asked specifically, I don't know.

Q. But you say you do remember him—

A. He said he wasn't in Bonair Park.

Q. What else?

A. He had been to Westover to go by some apartment where one or the other of them had lived. I don't recall whether he said both of them or one of them.

Q. Yes?

A. That he didn't drive a car and that he walked. He was going to call his wife from Westover, and he had been to two or three bus stops trying to get a bus before he was picked up.

Q. Now, do you recall testifying in the September 28th, 1967, preliminary hearing in this matter?

page 933 } A. Yes, sir.

Q. Mr. Hassan asked you this:

Question: Now did there come a time after he was advised of his rights that he made a statement?

Answer: Yes, sir.

Question: What was the statement he made then?

Answer: Well, he stated he had an argument with his wife earlier in the day, and he had left the apartment and started walking, and he was in the habit of walking a great deal and gave no reason other than just the argument, and he had been walking on Washington Boulevard where he was seen, he said he had been to three different bus stops and had walked from one bus stop up to the other and was in the bus stop at the time I saw him and previously he said that he was going to call his wife on the phone at the Post Office in Westover, and he said that he had gotten wet, his pants and so forth and had gotten wet, from just walking along the road hitting the bushes with his hands and walking.

Now, at that time there was nothing in this statement that you related at the preliminary hearing concern-

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page 934 } ing the fact that he didn't drive a car or that he
was not in Bonair Park.

Would you look at this statement and say whether that is
your testimony?

A. I guess so; yes, sir.

Q. Did you make any notes at this interview?

A. No, sir.

Q. So you are testifying now from just your recollection?

Mr. Hassan: If Your Honor please, he can't draw that
conclusion from that question. He asked him did he make any
notes at this interview. He might have made notes immedi-
ately afterwards. He might have notes at some other time.

You can't draw a conclusion he never made any notes.

By Mr. Harrigan:

Q. Did you make any notes at all?

A. Yes, sir.

Q. Do you have those notes?

A. Yes, sir.

Q. Have you read them recently?

A. Yes, sir.

Q. Who has them now?

A. I do.

page 935 } Q. May I look at them?

Mr. Hassan: I don't think he is entitled to look at them.
There's nothing inconsistent with what he read.

The Court: It seems he hasn't been testifying from them.
If he had been using them to refresh his recollection when he
testified, it would be proper to show them. I don't think it is
under these circumstances.

Mr. Harrigan: Let me ask you this: When was the last
time you looked at them?

The Witness: This morning.

Mr. Harrigan: Based on the difference in the testimony
he gave as to the statement at the preliminary hearing.

Mr. Hassan: There is no difference.

Mr. Harrigan: And any additions which are apparent.

Mr. Hassan: Additions are not differences. As a matter of
fact, I am going to object to the question, Your Honor. I
could have cut him off because the next question had to do
with Patler's wife. In fact, what he said is not different.

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The Court: Mr. Hassan, he is making an objection. Now, let him make it.

Go ahead.

page 936 } Mr. Harrigan: Now, in view of the additions in his testimony from the time of the preliminary hearing which was earlier in the point of time to the alleged occurrence, September 28th, and the fact about the car and that he hadn't been in Bonair Park, and I believe he said he was in Westover, and this one indicates he was going to Westover to make a phone call, I would like to look at his notes and see if his notes actually portray these statements or if he copied them down at an earlier time, that he did say these things. And if they are not his statements, then I would like to know how he happened to remember them.

The Court: Detective Davis, do you have a present recollection? Do you now recall the substance of your interview with the defendant at that time, and are you testifying from your present recollection of that interview?

The Witness: Yes, sir.

The Court: The motion is denied.

Mr. Harrigan: All right, note my exception.

By Mr. Harrigan:

Q. Was there anything else he said that you have not stated?

A. Not that I remember, no.

Q. Now, how many times did you talk to him? Once?

A. Once.

page 937 } Q. Was Pever in the room the whole time you were talking to him?

A. Yes, sir.

Q. Now, this statement that you have just told us by John Patler, was that one continuous statement that he made, or was it in response to a question and answer type of procedure?

A. Most of it was responses.

Q. Were there any questions?

A. Yes.

Q. Do you recall what the questions were that you or Pever asked?

A. Not all of them.

Q. What were some of them?

A. How he got wet.

Q. All right. And he answered that?

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A. Yes.

Q. What else?

A. Where he had been, his whereabouts.

Q. All right.

A. What the argument was about.

Q. With his wife, you are referring to?

page 938 } A. His wife.

Q. Did you ask him what time he left home?

A. Yes, sir.

Q. What did he say?

A. He said he wasn't sure, that it could have been about twelve o'clock.

Q. All right. What else?

A. I don't remember any more.

Q. Did you ask him questions about whether he drove?

A. I think he was asked if he had a car.

Q. And his response—

A. And he said he didn't drive, but his wife had access to a car.

Q. All right. Did you ask him about Bonair Park? Was he in Bonair Park that day, either you or Pever?

A. Not that I recall, no. Not that I remember, no.

Q. What about Pever?

A. I don't know. I can't remember everything.

Q. If you can't remember everything, then I would ask—

A. Well, from the information on the radio to start with. A suspect was seen entering or in or around Bonair Park.

Q. You told him that?

page 939 } A. Yes, sir.

Q. So he was aware—

A. And he said he hadn't been in Bonair Park.

Q. That was in response?

A. And we received a description on a man that had run or eluded the scout car, and he said he hadn't seen a scout car, he hadn't run from a scout car, and he hadn't been behind any houses.

Q. All right.

A. And we asked him what time he left home. He said around twelve o'clock. He wasn't sure; it could have been twelve.

Q. None of this was turned into any sort of a written document, was it?

A. Just my notes. No stenographer or anybody.

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Q. Would your notes be more accurate than your recollection?

A. I don't think so.

Q. When were your notes made?

A. Shortly thereafter.

Q. That is how many minutes?

A. I don't know. There was so much going on that day I couldn't give you minutes.

page 940 } Q. Well, they were made the same day.

A. The same day.

Q. I still would ask again to look at the notes to review them to see if there was anything he might have forgotten.

The Court: Denied.

Mr. Harrigan: Exception.

The Court: What you are trying to do is to set up a straw man so you can knock him down. You want to examine the notes to find if there are some inconsistencies so you can examine him on the inconsistencies. If you based your examination on his notes, I would permit you to do it, but when he says that his recollection comes out of a personal interview with the defendant on the 25th of August, then there may be inconsistencies.

Mr. Harrigan: My argument to that would be the fact that he read those notes as early as this morning in anticipation of testifying today at the trial. This certainly indicates that he is relying on them or he is relying on what he read from them this morning to a great extent. Otherwise, there would be no need for him to refresh his recollection.

The Court: If that ruling were correct, then you would be able to examine the police files as to the testimony of every witness.

page 941 } Mr. Harrigan: I think we have a right to the defendant's statements, especially the defendant's statements.

If there were an accurate portrayal of them and if they were transcribed, certainly if a reporter was in there transcribing it, I think we would be entitled to a copy of exactly what was said. The next thing to exactly what was said would seem to be those things that were put down as a memorandum of what was said within minutes or hours or a very short time after the interview itself as contrasted with testimony some two or three months after the interview. Therefore, I think the notes would be somewhat more reliable

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than the testimony. For that reason alone, we should have an opportunity to look at them since it is his statement and not another witness'.

The Court: I will permit Detective Davis to look at his own notes and then to say whether having looking at them he has any additional statements to make concerning this interview or any corrections that he wishes to make.

Mr. Hassan: I would prefer, Your Honor, that Detective Davis not use his notes in any fashion and that the Court can examine them. If the Court finds there's anything in there, then let the Court ask him the questions.

The Court: The effect is the same.

page 942 } Mr. Hassan: The effect is not the same. If he uses them, they are entitled to them, but if you use them, that doesn't make them entitled to them.

The Court: Let me see them. Do you have them?

The Witness: Yes, sir.

The Court: All right, let me see them.

I see no inconsistencies between this and the testimony except the most insignificant kind of detail. There are some points which seems to me to be minor which are omitted from his oral testimony in here, but no differences, no discrepancies.

Any further questions?

Mr. Harrigan: I will ask him a couple of other questions.

By Mr. Harrigan:

Q. Do you recall whether you asked him whether he owned any raincoats?

A. I don't recall. No.

Q. Did you ask him if he owned any guns?

A. No, sir.

Q. Did you ask him why he left the Nazi party?

A. He told us that he had left five months ago because he didn't see eye to eye on things.

page 943 } Q. Okay, that is all.

The Court: Now, does that conclude your examination on this point?

Mr. Hassan: Yes, sir.

The Court: Does the defendant object then to this testimony going to the jury?

Mr. Morris: No objection, Your Honor, as long as he

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doesn't ad-lib it like he did on the first time. On a question-answer procedure, we would have no objection, but if he comes up and ad-libs that he said this and then he said this and then he said this which indicates a voluntary type of thing, we prefer the prosecutor would ask him did he ask him if he's in Bonair Park.

Mr. Hassan: Your Honor, that is a proper examination that I conducted here in regard to him telling that, and if he wants to respond in this manner, he is entitled to.

The Court: I think, Mr. Morris, your point is a good one, that the jury would have to know. It makes a great deal of difference whether he said these things out of the blue, so to speak, or in response to a specific question.

Mr. Hassan: That is where they have cross examination.

The Court: But I think cross examination did
page 944 } cover it as it did this time. Now, I will not permit this testimony to go to the jury unless the defendant waives the objection to it. I say that for this reason.

I view this testimony to be exculpatory, not incriminatory. You have a right to it because the prosecution is under a duty to produce exculpatory evidence, and that is what he has done. It can be used against the defendant. If it turns out that the prosecution later in this case can contradict something that the defendant said and thus raise an inconsistency which the prosecution can argue to the jury; therefore, these being prior self-serving or consistent statements by the defendant, the prosecution is not entitled to put them in, and if they are put in at this point, it would have to be with your concurrence because it is possible then that some discrepancy can be made out between his actual movements and what he told the detectives at the time, and that could be damaging to him, but it is not at this time.

Mr. Hassan: If Your Honor please, I would like to object to that statement. It seems to me that two or three times every day we are here arguing on a motion to strike.

Now, if I don't tie this in with something else, this is the proper function of the Court at that time, but every time I
page 945 } bring in something, I have got to produce one witness at a time. I'm not here in any futile gesture. If I didn't think I was going to be able to make this case, I wouldn't try, but the time for the Court to say things are going to be thrown out is on a motion to

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strike but not every time a portion of an entire case is presented, and this record is just full of this, and I object to it, Your Honor.

The Court: You are here, Mr. Hassan, in a dual capacity.

Mr. Hassan: I know my capacity, Your Honor.

The Court: You are not just here as a representative the Commonwealth seeking to obtain a conviction. I am sure you do know it. On the motions which were had for discovery, which were denied, it was made clear and you voluntarily said that you would produce any exculpatory matter, and I take this to be your compliance with that duty that you had.

Mr. Hassan: Please take my case as a whole, not piecemeal. You don't know where I'm going, Your Honor; you do not have my trial brief; you have not spent the hours in talking to these witnesses as I have, and the statements and each piece of evidence that comes up, tying them in and tying them in. If I didn't intend to get them tied in, I would not produce them, and this is not purely exculpatory as it appears. In fact, the case of the opening state-
page 946 } ment of the defendant is no longer exculpatory.

Mr. Morris: Your Honor, we totally agree with the Court and the ratio *jus dividendi*.

The Court: I take it from what you earlier said that you are not objecting to it going to the jury.

Mr. Morris: No, sir.

The Court: Let's take as short a recess as possible, fifteen minutes.

(Whereupon, a short recess was taken.)

The Court: Call the jury.

(In the presence of the jury.)

Whereupon, ERNEST R. DAVIS resumed the stand, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Did there come a time when you and Sergeant Pever

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went into the interview room where the defendant, John Patler, was?

A. Yes, sir.

Q. About what time was that?

A. About 2:05 p. m.

page 947 } Q. What, if anything, in the way of advice or rights did Sergeant Pever tell the defendant in your presence?

A. He told the defendant that he didn't have to make any statement if he didn't want to and any statement he did make would have to be voluntary. He was entitled to a lawyer and anything he did say could be used for or against him in the court.

Q. Did he say anything to him about why he was there?

A. Yes, sir.

Q. What did he tell him about that?

A. He said he had been picked up as a suspect in a felony case due to the information received over the radio in description and routes of travel of the suspect.

Q. Did there come a time when the defendant had anything to say?

A. Yes, sir.

Q. What did he say, if anything?

A. He stated that he had an argument with his wife, and he didn't know what about, and he left the house or the apartment and went for a walk. He was in the habit of walking quite a bit. He stated that he had been to Westover. He had gone up there to go by an apartment that either he and his

page 948 } wife or his wife, I don't know which, had previously lived in, and he had gone up there for sentimental reasons. He also stated that he was going to call his wife from Westover across the street from the post office, and he had been asked about his whereabouts and being wet, and he said he had gotten wet from just walking, walking by bushes and hitting them with his hands as he went by them. He was asked if he had a car, and he said he didn't drive but his wife had access to an automobile. And he was told that the information we received over the radio that the descriptions that we received and the directions of travel of the suspect in or near Bonair Park and also the description—another description we had gotten was on a subject that had ran or disappeared from a scout car, and he stated that he had not been in Bonair Park. He stated he hadn't

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been behind any houses and that he hadn't *ran* from any scout cars, and he said he had walked to a bus stop to catch a bus, and the bus didn't come. Then he continued to walk to two or three other bus stops until he had got to the one where he was picked up.

Q. Did he have anything to say about his affiliation with George Lincoln Rockwell?

A. Yes, sir. He said that he had left the party about five months ago because they didn't see eye to eye on things.

Q. Did he have anything to say about his trip
page 949 { from the point of apprehension to the police
headquarters?

Mr. Harrigan: I object to Mr. Hassan leading the witness, Your Honor. I think he has a right to ask him what he said.

The Court: I didn't understand the question. Did you ask him if he said something—

Mr. Hassan: Concerning his trip from where he was apprehended to the police station.

The Court: I don't consider that leading. Overruled.

The Witness: They asked him if he remembered what he had said previously at the scene, and he stated the same thing, "Am I supposed to have done that?" And he was asked if he saw anything at the scene, and he stated that he had seen a body, and the body was lying on the right side with the arms folded, and then he later said the body he saw was lying on the back.

He was also asked if he had seen any blood, and he said no, he hadn't.

The Court: Now, Detective Davis, is that because after picking him up you had driven him by the scene? Is that what you are referring to?

The Witness: Yes, sir.

page 950 { The Court: What he had seen when you drove
him by there in a squad car?

The Witness: Yes, sir.

The Court: All right, go ahead.

The Witness: And he stated that he didn't know who it was. He didn't know who the body was.

Mr. Hassan: Is there anything else that you can recall that he said?

The Witness: No.

Mr. Hassan: What time did you stop talking to him?

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The Witness: Approximately ten minutes later after we had gone into the room.

The Court: Let me interrupt you again, Mr. Hassan.

Did he say anything about his ability to drive a car?

The Witness: I thought I said; maybe I didn't. He said he didn't drive a car, but his wife had access to a car. But he didn't drive.

The Court: Did he say anything about his habit of walking?

The Witness: Yes, sir, he said he was in the habit of walking quite a bit; he often walked.

The Court: Go ahead, Mr. Hassan.

page 951 } By Mr. Hassan:

Q. Did he say anything about walking to and from a place of employment?

A. He mentioned some restaurant, but I don't remember where.

Q. Did he say what time he left his home?

A. Yeah, he was asked what time he left—the argument—what time he left home, and he said he wasn't sure, but he thought it was around twelve o'clock.

Q. Did there come a time when his attorney arrived at police headquarters?

A. Yes, sir.

Q. What time was that?

A. About 2:20 p. m.

Q. I don't recall whether you described his clothing. I think you did.

Did there come a time when you obtained a warrant for the defendant?

A. Yes, sir.

Q. What time was that?

A. Shortly after three p. m.

Q. What did you do then?

A. I went back to the Detective Bureau to the
page 952 } room where he was with his attorney, and the
warrant was executed on him about 3:22 p. m. in
the presence of his attorney, Sergeant Pever and Detective
Faulconer and Detective Crickenberger.

Q. Did there come a time when the procedures of booking such as fingerprinting and photographing were done in your presence?

A. Yes, sir.

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Q. Where were they done?

A. They were done in the Detective Bureau on the third floor.

Q. Did there come a time when he was taken from the Detective Bureau to jail?

A. Yes, sir.

Q. What time was that?

A. He was taken to jail about 4:30, 4:35 p. m.

Q. Would you describe for the Court and the jury how he was taken and who was present on the trip?

A. Yes, sir, Sergeant Pever and myself took the suspect from the Detective Bureau, went down the hallway to the third floor, went down the stairway over to the other building next door, and went down to the first floor there. He was taken out the rear door of the second building and right into the rear of the police patrol wagon which had
page 953 } been backed up right to the door, and Mrs. Lane, his attorney, was with him the whole time. And the subject, Sergeant Pever, Sergeant McLane, Mrs. Lane and myself were in the rear of the patrol wagon. The wagon was driven around the block around the building. He was taken around to the front of the Violations Bureau entrance, and the wagon was then backed right up to the door leading into the Violations Bureau. The elevator to the jail was already down and waiting. The subject was taken right in on the elevator, taken right up to the third floor to the jail.

Q. Now, when he arrived at the jail, where did they put him, if anywhere?

A. In the infirmary.

Q. What occurred, if anything?

A. His clothes were taken.

Q. Did there come a time when you received these clothes?

A. Yes, sir.

Q. When did you receive them?

A. Approximately ten minutes after he was taken there.

Q. Who gave them to you?

A. The deputy, Wilkerson.

Q. Were they the same clothes that you had
page 954 } seen him wearing?

A. Yes, sir.

Q. What did you do with them?

A. I took them back to the Detective Bureau and proceeded to mark them, put them in a Peoples' Drug Store

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shopping bag, stapled the bag shut, attached a tag on it, marked the bag, filled out a property form on the bag and its contents and took that down to the police counter and turned it over to Officer Skinner, and that was it.

Q. Did you ask for property number 23879? I show you Commonwealth's Exhibit 8-A, marked for identification, and ask you if you can tell me whether or not that is an item which you marked. You can open it up and look at it.

A. Yes, sir.

Q. What mark did you put on it?

A. My initials, E. D., and also the date, 8-25-67.

Q. What is that item?

A. Well, it is a large Cannon white bath towel.

Q. Where did you first see that?

A. I saw it draped around the suspect's neck when he was standing at the bus stop at Washington Boulevard and Harrison Street.

Q. If Your Honor please, I would like to offer page 955 } that as Commonwealth's Exhibit 8-A.

Mr. Harrigan: I would like to ask a couple of questions on that.

The Court: Go ahead.

VOIR DIRE EXAMINATION

By Mr. Harrigan:

Q. Was that the towel this man had on when he was stopped go in the same police car that he went in?

A. Yes, sir.

Q. Was that your car?

A. Yes, sir.

Q. When he got out of that car, you didn't take the towel with you, did you?

A. No, sir.

Q. Did somebody else take it out?

A. I don't believe so; not that I remember, no.

Q. Who took it out? You did?

A. No, I didn't take it out.

Q. I don't think he has established a chain. Your Honor. I don't know where that towel has been. It could have been handled by any number of people.

Ernest R. Davis

The Court: Where and when, Detective Davis, did you put your initials on it, if you remember?

page 956 } The Witness: In the Detective Bureau.

The Court: At what time, do you recall? Was it while Mr. Patler was there being interrogated or after he had gone to jail or when?

The Witness: I believe it was after—

The Court: After he had been taken over to the jail?

The Witness: Yes, sir.

The Court: You came back and the towel was in the Detective Bureau then?

The Witness: Somebody went down to the car, and it was still in the car, and they brought it up, and I don't know, one of the men in the office.

By Mr. Harrigan:

Q. You had no mark on it at that time to distinguish the towel at all, did you?

A. No, no mark at all.

Q. You only marked it sometime after three o'clock or something or marked the towel brought up to you?

A. Yes, sir. It was still in the car.

Q. I don't think a proper foundation has been laid at this time, Your Honor.

Mr. Hassan: Did you mark that at the same time you marked all the other properties you received?

The Witness: Yes, sir.

The Court: But this traveled a different route than the other things, didn't they? The other things were worn by him to the jail and this was not.

The Witness: It was in the car with us when we came to the station. Yes, sir.

Mr. Harrigan: I would just like to know what happened to it from that point up to wherever it got to wherever it was going, and I think that foundation should be laid first.

The Court: When you went from the booking procedure and put him in the wagon and took him over to the jail, was this in the wagon there with him at that time?

The Witness: No, sir.

The Court: All right, the objection is sustained at the present. I don't think a sufficient connection has been shown.

Ernest R. Davis

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Now, I would like to ask you a few more questions about it so we don't have to recall him.

When you returned from the jail with the other page 958 } clothing, where was that towel?

A. To my knowledge, it was still in the cruiser.

Q. When you brought the other clothing over?

A. Yes, sir.

Q. Where was it in the Detective Bureau when you first saw it?

A. It was in the front office.

Q. In the front office?

A. Yes, sir.

Q. Whose office is that?

A. It is in the large office facing Uhle Street.

Q. In either where the secretaries are or where the captain is?

A. No, sir, the opposite end.

Q. On the opposite end?

A. This end (indicating).

Q. The sergeant's office?

A. The east end. It is in the office facing Uhle Street. It would be the east end of the building.

Q. In the sergeant's office?

A. No, in the room next to the sergeant's office. The main room there where there is eight or ten desks, men and a couple of tables. I was sitting there at the table.

page 959 } Q. That is where you first saw it?

A. Yes, sir.

Q. You don't know how it got there? The last time you saw it was in the cruiser?

A. Yes, sir.

Q. It was not there when you came back from the jail with the rest of the clothing?

A. No, sir.

Q. It arrived there after that?

A. Yes, sir.

Q. Would you put that back in the envelope?

Mr. Harrigan: I have one more question on the towel. It was on the floor of the office in there, wasn't it?

The Witness: I don't remember that.

Ernest R. Davis

By Mr. Hassan:

Q. I would like to show you Commonwealth's Exhibit marked 8-B for identification and ask you, sir, if you did initial that.

A. Yes, sir.

Q. Did you date it?

A. Yes, sir. I put my initials and the date, 8-25-67; also the time, 5:30 p. m.

page 960 } Q. What is that?

A. That is the time—

Q. What is that item?

A. It is a yellow shirt, a man's shirt, long-sleeved, small stripes.

Q. Is that the shirt that the defendant was wearing at the time that you apprehended him until it was handed to you at the jail?

A. Yes, sir.

Q. You took that over to the table, the Detective Bureau, and initialed it?

A. Yes, sir.

Q. I would like to offer that into evidence, Your Honor.

The Court: Objection?

Mr. Harrigan: I would like to ask a few questions on that, too, Your Honor.

The Court: Go ahead.

VOIR DIRE EXAMINATION

By Mr. Harrigan:

Q. Now, you say the defendant had that shirt on, right?

A. Yes, sir.

Q. Were the sleeves rolled up?

A. Partially.

page 961 } Q. To how far? This far (indicating)?

A. No, it was below the elbow.

Q. Now, you say you went over to the jail with the defendant, right?

A. Yes, sir.

Q. Then did he go somewhere?

A. Into the infirmary over the jail office.

Q. You didn't go in there?

A. No, sir.

Q. Who went in there?

Ernest R. Davis

A. I don't know if anybody went in there. He was told to take his clothes off. I don't know if anybody was in there or not. They were handed to Wilkerson and Wilkerson handed them to me.

Q. Wilkerson is—

A. The deputy sheriff.

Q. You don't know if anybody else was in there or not?

A. No, sir.

Q. Now, did they go through any other hands?

A. It went to Wilkerson to me, as far as I know.

Q. Did you put them in a bag at that time?

A. After I had all the clothes I asked the deputy sheriff if he had a paper bag, and they looked around the
page 962 } office or the immediate area of the office there to
find a paper bag, and they finally came out with
a Peoples' Drug Store shopping bag and gave it to me, and I
put all the clothes in that and carried the bag across the
street.

Q. A Peoples' Drug Store bag?

A. Yes, sir, a shopping bag.

Q. Now, you are sure that is the same shirt?

A. Yes, sir.

Q. All right, that is all for right now, Your Honor.

Mr. Hassan: I offer it into evidence, Your Honor.

The Court: Do you object to the admission of the shirt into evidence?

Mr. Harrigan: I would object unless I know who was in the room. The only thing I want to find out, I want to find out who was handling the clothing.

The Court: You are entitled to inquire, and you have inquired into that. As far as the chain of custody is concerned, the law doesn't require, as I understand it, that it be absolutely complete but reasonably certain so that it can be established through which hands it has passed and that there has been no clear opportunity for any substitution or tampering. I think that requirement has been met in this case,
and the objection is overruled. It will be re-
page 963 } ceived into evidence marked 8-B.

(The shirt previously referred to was marked Commonwealth's Exhibit No. 8-B for identification and was received in evidence.)

Ernest R. Davis

Mr. Harrigan: Exception.

By Mr. Hassan:

Q. I ask you to examine that bag, sir, and ask you whether or not that is the bag you had been talking about.

A. Yes, sir, that has my initials, E. D., and the date, 8-25-67, on it.

Q. I would like to have that marked Commonwealth's Exhibit 8-C.

I am going to offer that into evidence, Your Honor.

The Court: Is there an objection?

Mr. Harrigan: What is that, the bag?

Mr. Hassan: That is the bag.

VOIR DIRE EXAMINATION

By Mr. Harrigan:

Q. Is that the bag that you got?

A. Yes, sir.

Q. That is your marking on it?

A. Yes, sir.

page 964 } Q. You got that from the jail?

A. Yes, sir.

Q. What was in it before it was given to you?

A. It was empty when it was given to me.

Q. You don't know who had it before that?

A. No, sir.

Q. Who gave it to you?

A. Another deputy, John Eckert, I believe.

Q. This was a five o'clock shift or whatever it was, isn't that right?

A. No. Well, I don't know what their hours are.

Q. All right.

The Court: It will be received into evidence as 8-C.

(The bag previously referred to was marked Commonwealth's Exhibit No. 8-C for identification and was received in evidence.)

Ernest R. Davis

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Now, sir, I would like to have you look at this item and tell me whether or not you initialed it.

A. Yes, sir. E. D., my initials, and 8-25-67 page 965 } marked by me.

Q. All right. I would like to have that marked as Commonwealth's Exhibit 8-D for identification. I would like to offer that into identification, Your Honor.

Mr. Harrigan: I would like to have the same objection on that, Your Honor. There's been no showing on who has been handling that up to this time.

The Court: Did you ask him the foundation questions on this pair of trousers?

Mr. Hassan: Yes, I asked him if he had received that and put his initials on it, and he said yes, and we found his initials on this without opening the bag.

The Court: All right. It will be received in evidence, marked Commonwealth's Exhibit 8-D.

(The pair of trousers mentioned above was marked for identification as Commonwealth's Exhibit No. 8-D and was received in evidence.)

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Now, sir, I will ask you to open that and show me or if you have marked it on the outside of that, page 966 } show me where your initials are or tell me where your initials are.

A. Yes, sir, I marked both of them on the left side of the shoe on the sole at the heel, initials E. D., 8-25-67, on both of them.

Q. These are the shoes that came from Patler?

A. Yes, sir.

Q. I would like to have these marked for Commonwealth's Exhibit 8-E. I offer these in evidence, Your Honor.

Mr. Harrigan: The same objection, Your Honor, not a proper foundation.

The Court: They will be received and marked 8-E.

Ernest R. Davis

(The pair of shoes referred to above were marked Commonwealth's Exhibit No. 8-E for identification and were received in evidence.)

Mr. Harrigan: Exception.

By Mr. Hassan:

Q. I would like to ask you, sir, what these items are and whether or not you marked them?

A. One is a pair of socks. I didn't mark them, and the others are a belt which I did mark.

Q. Will you open it and tell us where you marked them?

A. I marked the belt underneath the leather page 967 } strap or plastic strap with my initials, E. D., 8-25-67.

Q. And the socks are what color?

A. Black.

Q. Black socks. I would like to offer this for identification as Commonwealth's Exhibit 8-F.

VOIR DIRE EXAMINATION

By Mr. Harrigan:

Q. You say the belt you did mark?

A. I marked the belt, and I didn't mark the socks. There was no place to mark them.

Q. When did you mark all these things, up at the jail?

A. No, sir, at the Detective Bureau in the front office on the east end of the building.

Q. Did you take them back and mark them right then or what did you do with them?

A. We took them right back there and proceeded to mark them and fill out the property forms.

Q. Who was with you?

A. Nobody was sitting right there with me when I marked them.

Q. Who went over the the jail with you? Did anybody walk back with you?

page 968 } **A.** Sergeant Pever.

Q. Now, the socks. You didn't mark these?

A. No, sir.

Q. Any reason for that?

A. I don't know where I would mark them.

Q. Did you put some kind of tag on them or anything?

Ernest R. Davis

A. I didn't mark it. No, I didn't tag them. I didn't mark them. They were in the contents with all the other clothes, all in the bag together.

Q. Didn't you consider that significant?

Mr. Hassan: I am going to object to that, Your Honor. He put everything in the bag; he sealed the bag and the bag has been initialed. The bag has been put into evidence.

Mr. Harrigan: Since the description was a man wearing yellow socks, the fact that these socks are black would be important.

The Court: The question is argumentative, and the objection is sustained.

Now, Detective Davis, you took those socks and put them into the bag which you stapled shut, is that correct, along with all the other items?

The Witness: I took all the other items from page 969 } the jail at the same time and put them into the bag and put the bag and its contents at the Detective Bureau and proceeded to mark all the clothes I could.

The Court: Let him examine the socks, Mr. Harrigan.

Every item was put back into the bag, and the bag was stapled shut and tagged?

Looking at those socks, now, can you identify those as the ones that were given to you at the jail and taken from the defendant?

The Witness: I don't know how I can identify them, but everything that was in the bag was given to me at the jail and the bag was never left open except when I took it out to mark and put it right back into the bag.

By Mr. Harrigan:

Q. Let me ask you a question on the socks. If you put that pair of socks next to a size just like it, you wouldn't be able to tell the difference, would you?

Mr. Hassan: He hasn't said he could. I'm going to object to that, Your Honor. He hasn't indicated in any way that he could identify it from a thousand pairs of socks.

The Witness: I could not.

Mr. Harrigan: He said he could not.

page 970 } The Court: I think the question is unnecessary.

I take it you object?

Mr. Harrigan: I object.

Ernest R. Davis

The Court: I will sustain the objection as to the socks. The belt is admitted.

Were they marked together as one exhibit?

Mr. Hassan: They were all one exhibit. Yes, Your Honor, all one exhibit, and they have been returned in this bag where they were examined by an expert who will testify later who has these markings.

Mr. Harrigan: What is the exhibit on these socks? What is the number, if I may ask?

Mr. Hassan: The exhibit on the socks is 8-F.

Mr. Harrigan: 8-F. What is the property room number?

Mr. Hassan: The property room number is 23879, FBI number Q-11, number 12 on the socks.

Mr. Harrigan: I just need the property number.

You are going to refuse this, Your Honor?

The Court: Well, my position on the socks is this. I consider his testimony as to his authentication by initials and dates such on these items which he initialed and dated, and

I would not require any subsequent chain of custody page 971 } today bringing those up to the present date. The fact that he identified them there and now, recognizes his initials on them and came out of the bag which he stapled shut at that time and can now recognize it.

As for the socks, the Commonwealth will have to bring the chain of custody up to now, because they were not marked.

I will receive the belt as 8-F and the socks, do you want to mark for identification as 8-F-1 or something of that sort?

Mr. Hassan: Yes, sir.

The Court: Mark them for identification.

(The belt referred to above was marked Commonwealth's Exhibit No. 8-F for identification and was received in evidence. The pair of socks referred to above were marked Commonwealth's Exhibit No. 8-F-1 for identification.)

Mr. Hassan: If Your Honor please, I would like for the record to state that the same reasoning on the marked items have been put in the bag and locked and turned page 972 } over to the property room applies to the socks which were locked in the same bag, and I would like to object to the Court not receiving them at this time for that reason.

The Court: All right, sir.

Ernest R. Davis

Mr. Hassan: Now, if Your Honor please, I would like to show 8-B, C, D, E, & F to the jury.

Mr. Harrigan: I would object to that at this time, Your Honor, on the grounds I think there should be some showing where these things have been from the time that they left Patler up to the present. What has happened to them? If they're in the same condition and if somebody has handled them, got them dirtier or not dirtier or something.

The Court: Before they are shown to the jury, I will let you examine them, Detective Davis, as to whether there is any difference in their appearance now as to when he took them from Patler. You may do this at this point or if you don't want to ask them those questions, I will.

Mr. Hassan: I don't want any misunderstanding, Your Honor. They have all been to the Federal Bureau of Investigation. We are going to have six of their experts here. I don't know how many handled them. Jesse Williams has testified on the socks.

The Court: I am interested in a substantial page 973 } difference in appearance, and if he can tell by looking at them. So let him look at them.

Do you know whether there's a substantial difference in any of them?

The Witness: A couple of them.

The Court: There is a substantial difference in a couple of them?

The Witness: Yes.

The Court: Tell the difference.

The Witness: When I had the shoes, the shoes were soaking, wringing wet, and they are dry now. So if you want to consider that a difference, and the pants were also partially wet, and I imagine they are dry now.

Mr. Harrigan: How about the shirt? Wasn't that wet?

The Witness: To my knowledge, it was dry.

Mr. Harrigan: The shirt was dry, the pants were wet, the shoes were wet?

The Witness: Partially, the shoes were wet.

The Court: You are referring to the time when they were taken from Patler in the jail?

The Witness: Yes, sir.

The Court: Any other differences in appearance? page 974 }

The Witness: Not to my knowledge, no. Not that I can see, no.

Ernest R. Davis

By Mr. Harrigan:

Q. What time were they taken from Patler? Five o'clock?

A. Four or five.

Q. You are telling me those pants were soaking wet at five o'clock when you took them off him?

A. They were still—I'd say the shoes were soaking wet.

Q. All right.

A. And the pants were partially wet.

Q. At five o'clock?

A. It wasn't five o'clock. It was before five o'clock.

Q. You marked them?

A. I know I marked them.

Q. What time did you mark them?

A. I took them before five o'clock.

Q. How long did it take you to get from the jail over to where you marked them?

Mr. Hassan: Objection, Your Honor. How long it took him to get there doesn't make any difference. How long after he got them makes the difference, not how long
page 975 } it took him to take them.

Mr. Harrigan: He's already testified he got them immediately and marked them.

The Court: I fail to see the significance of this particular line. This is general cross examination, and this is only for the purpose of deciding whether the jury may inspect these articles. Have you covered this point?

Mr. Harrigan: Is there anything on any of those properties that were not there before when you first observed them, any marks or anything else?

The Witness: My marks weren't on them when I first got them.

Mr. Harrigan: I mean dirt.

The Witness: Not that I can see.

Mr. Harrigan: All right, now, does that mean there aren't any or you don't know?

The Court: It means just what he says, he can't see any. I don't believe you can take him much further than that.

Mr. Hassan: I hope the record will indicate that he excluded any signatures of anybody else, any marks of anybody else who examined them. He talked about dirt. I mean dirt when he started to talk about signatures.

page 976 } The Court: All right, the jury may examine the exhibits.

Ernest R. Davis

Mr. Harrigan: Exception.

The Court: You may look at those.

Mr. Hassan, just a moment, you have got little brown paper bags in with these things.

Mr. Hassan: These are FBI markings that are in them.

The Court: I don't want the jury to examine those until they are connected up.

Mr. Hassan: There isn't anything to examine.

Mr. Harrigan: I don't want Mr. Hassan to testify on what is in this. I think this has to be done through witnesses. The tags are on there; there has been no testimony as to who put them on and who wrote on them.

Mr. Hassan: It is utterly impossible to run a panorama, a testimony on everything—

Mr. Harrigan: May I finish, Your Honor?

The Court: Go ahead.

Mr. Harrigan: Several of the items have been connected up. I think the jury should know what every one of them is before they start speculating.

The Court: I agree that every part of the ad-page 977 } mitted exhibits should be.

Mr. Hassan: I submitted them as they are with the FBI markings in them. I want the complete chain showed in the exhibit. That is the way I submitted them and I understand that is the way they are identified. They came back with sealed bags with the bags on the inside.

Mr. Harrigan: I object, Your Honor.

The Court: The objection is sustained. He will have to remove the FBI markings at this time.

Mr. Hassan: If Your Honor please, I will refrain from showing them to the jury. I want them to get the whole picture, and that is part of the picture.

Mr. Harrigan: That is what I asked.

The Court: We will withhold them from the jury.

Mr. Hassan: These were even sealed from the bag.

Mr. Harrigan: I move that his statements be stricken from the record, Your Honor.

The Court: The motion is granted, and the jury will disregard the comments of counsel as to the condition of the exhibits and rely only on testimony from the witness stand as to the condition of the exhibits as to any particular item.

Mr. Hassan: If Your Honor please, they are entitled to rely on what they say.

page 978 } The Court: Mr. Hassan, don't argue with me.

Ernest R. Davis

Mr. Hassan: I object to your ruling, Your Honor. They are also entitled to look at what they see. If they see them sealed, they are entitled to take them into consideration.

The Court: Your objection is noted.

Do you intend to proceed with this witness?

Mr. Hassan: Yes, I do, Your Honor.

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. When you first saw these clothing, will you describe to the jury each item's condition as to wetness or dryness when you first saw them?

A. The shoes were soaking wet; the socks were wet; the pants were wet about six inches above the knees; and as best I can recall the shirt was dry, and the towel partially was wet.

Q. Had this condition changed by the time you received them in the jail?

A. No, sir.

Q. Were they the same degree of wetness the first time as well as when you initialed them?

A. I would say so.

page 979 } Q. No further questions.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, on that last point when you first saw these items when you first saw them, they were on John Patler, right?

A. Yes, sir.

Q. That was on Harrison Street and Washington Boulevard?

A. Yes, sir.

Q. You said the shoes were soaking wet?

A. Yes, sir.

Q. You remember that?

A. Yes, sir.

Q. The pants were wet?

A. Partially.

Q. Partially? Six inches above the knees?

A. Yes, sir.

Ernest R. Davis

Q. When you say wet below the knees, were they soaking wet or were they partially wet?

A. Well, they were wet.

Q. Were they totally wet?

A. You could see the difference.

Q. Were they spotted wet?

A. No, sir, they were solid.

page 980 } Q. Solid wet?

A. Yes, sir.

Q. Now, you said the shirt was dry?

A. To the best I recall the shirt. Yes, sir.

Q. You were the first one at the scene to Patler, weren't you?

A. Sergeant Pever and I went at the same time.

Q. How about the towel?

A. It was partially wet.

Q. Did you feel it?

A. No.

Q. You could see that?

A. Yes.

Q. Was his face dry?

A. I can't answer that. I don't remember.

Q. Well—

A. I don't remember.

Q. You don't remember that?

A. No, sir.

Q. Okay. Did you search Patler?

A. No, sir.

Q. Who did?

A. I don't know.

page 981 } Q. Did you tell him to lean against your car?

A. I told him to put his hands on the hood.

Q. What was the purpose of that?

A. Just more or less to keep him there.

Q. You didn't search him or pat him down?

A. I didn't search him.

Q. You didn't find anything other than those clothes?

A. And towel.

Q. Now, did you tell John what he was arrested for at Washington Boulevard and North Harrison Street?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Did anybody else in your presence?

Ernest R. Davis

A. Not that I know of.

Q. Now, after you left that address, you went where?

A. Harrison Street.

Q. You put Patler in your car, didn't you?

A. Yes, sir, he was put in my car.

Q. By Detective Faulconer?

A. Yes, sir.

Q. Then were you driving?

A. Yes, sir.

page 982 } Q. Did you go back to the 6000 block of Wilson Boulevard?

A. Yes, sir.

Q. Did you drive by the scene?

A. Yes, sir.

Q. Did you circle the block by the scene?

A. Yes, sir.

Q. Did there come a time when you stopped at the scene?

A. Yes, sir.

Q. Were you still at Wilson Boulevard when you stopped?

A. Yes, sir.

Q. Now, where were you in relation to Rockwell's body when you stopped? Do you know?

A. I couldn't say.

Q. You are not sure?

A. I don't know.

Q. Now, you talked to two officers, is that right?

A. Yes, sir.

Q. They told you to go back to the station?

A. The Violations Bureau.

Q. Then you went back to the Violations Bureau?

A. To the station.

page 983 } Q. You didn't go to the Violations Bureau because it was closed?

A. Yes, sir.

Q. So where did you take him?

A. To the Detective Bureau.

Q. To the Detective Bureau?

A. On the third floor.

Q. All right.

Up to that time, had you informed him what he was being held for?

A. He was told he was a suspect in a felony.

Q. Is that when you told him at that time?

A. He was told on the way to the station.

Ernest R. Davis

Q. Is that right?

A. Yes, sir.

Q. Who told him that?

A. Detective Faulconer and I.

Q. You didn't tell him then what felony?

A. No, sir.

Q. Then what time was it that you took him over to the Violations Bureau?

A. Shortly after 1:30 when they opened.

page 984 } Q. Was that when that tape that was read to the jury was made?

A. Yes, sir.

Q. Do you recall the end of the tape or when you asked him if he understood his rights, and he said, "I don't know what they are holding me for, why are they holding me?", something to that effect?

A. No, sir.

Q. Did he make that statement? Did that sound like Patler talking?

A. It sounded like him.

Q. You were there?

A. It sounded like him.

Q. Did he say that?

A. Yes, sir, he said that.

Q. When you took him back to the station, where did you take him then?

A. Back up to the third floor Detective Bureau, put him in the interviewing room.

Q. Who went in with you?

A. Sergeant Pever and I went in about five minutes later or so.

Q. You hadn't said anything to him before page 985 } Sergeant Pever went in the room, did you?

A. Are you talking about from the Violations Bureau?

Q. No, up to the third floor of the interrogation room.

A. No, sir.

Q. Did you go in for the purpose of getting some sort of statement from him?

A. No, sir.

Q. You did not?

A. Well, not a statement; we were going in to interview him.

Ernest R. Davis

Q. All right, you went in for the purpose of interviewing him.

A. Yes, sir.

Q. Now, is there any reason why you didn't have a stenographer there so we knew exactly what everybody said?

A. He hadn't been charged.

Q. You hadn't told him that yet?

A. A warrant hadn't been obtained for him.

Q. What time was this?

A. Which, now?

Q. That we are talking about.

A. The warrant or when we went in?

page 986 } Q. For your interview.

A. Approximately 2:05 p.m.

Q. Then did you and Sergeant Pever start asking him questions?

A. After he was advised of his rights again and we told him why he was there.

Q. Who told him that, you or Sergeant Pever?

A. Sergeant Pever.

Q. You told him why he was there? Now tell us exactly what you told him.

A. Sergeant Pever told him.

Q. What did he say?

A. He advised him of his rights.

Q. Okay.

A. Do you want me to go through that?

He said that from the information we received over the radio, there had been a felony committed, and the description of the suspect and also the direction of travel or route of the suspect, plus the second description of the suspect that was seen and eluded or ran from a police car, and he was in the area yet and—in the area, and he was picked up as a suspect.

Q. All right. Now, you didn't tell him what
page 987 } felony you were talking about?

A. No, sir.

Q. Any reason for that?

A. He hadn't been charged.

Q. That was your reason? All right.

Did you start asking him some questions?

A. Yes, sir.

Q. What was the first question asked him?

A. I don't remember the first one.

Ernest R. Davis

Q. To the best of your recollection.

A. He was asked about his whereabouts.

Q. Who asked him that?

A. Sergeant Pever.

Q. Did he respond to that?

A. Yes, sir.

Q. What did he say to that?

A. He said he had been in Westover.

Q. He said he had been in Westover?

A. Yes, sir.

Q. You're sure of that now? Did he say he had been there or did he say he was headed there?

A. He said he had been there.

Q. Did Pever say where in Westover?

page 988 } A. I don't remember.

Q. You don't?

A. No.

Q. Then did you ask him some other questions?

A. Yes, sir.

Q. What was the next one that you can recall?

A. I can't give them in order.

Q. Give them to me in any way that you can.

A. I asked him if he had a car.

Q. Would your notes help you?

A. No, sir.

Q. You have notes?

A. Yes, sir.

Q. You can look at them. I don't care.

A. No, I don't need them.

Q. Okay, he was asked if he had a car, right?

A. Yes, sir.

Q. What did he say to that?

A. He said that he didn't drive, but his wife had access to a car. He said he didn't drive a car.

Q. Did he say whether or not he had a license?

A. I don't remember that. He said he didn't drive.

Q. Then what is the next thing that he said
page 989 } or you asked him?

A. Well, he explained about his whereabouts and he said that he had an argument with his wife, and he didn't remember about what, and he left the apartment and went for a walk.

Q. Now, did he tell you where he lived?

A. Yes, sir.

Ernest R. Davis

Q. Where was that?

A. 2522 Lee Highway.

Q. So you didn't have any problem getting that information?

A. No.

Q. You knew his name?

A. Yes, sir.

Q. He said he left the apartment where he was living?

A. Yes, sir.

Q. Did he say why he left?

A. He had an argument with his wife.

Q. Did he say approximately what time that he left?

A. About twelve. He said he wasn't sure of the time, but it could have been around twelve o'clock noon.

Q. Did he have a watch on?

It would be in property if he did.

page 990 } Mr. Hassan: I beg your pardon. Did you say it would be where?

Mr. Harrigan: It would be in property, his personal property. It would probably be in jail.

The Witness: I don't remember if he had a watch. I'm not sure he did. I'm not sure.

By Mr. Harrigan:

Q. Now, he said he left home approximately twelve o'clock. You didn't recall him having a watch, right?

A. No.

Q. What else did you ask him?

A. I asked him what the argument was about, and he said he didn't know with his wife.

Q. Did you take that to mean he didn't know or he just didn't want to tell you?

A. I had no way of telling.

Q. You didn't pursue it?

A. No, sir.

Q. What else did he say to the best of your recollection?

A. He said he had gone for a walk after the argument; he was in the habit of doing a great deal of walking; he had gone to Westover; he had gone by an apartment
page 991 } in Westover where he and his wife or else just his wife alone had lived previously, and he walked by there for sentimental reasons. He said he hadn't

Ernest R. Davis

been behind any houses; he hadn't *ran* from any scout cars, and he had gotten wet just from his walking and hitting bushes with his hands as he walked.

Q. Now, just for purposes of clarification, when you say Westover, is this the Westover area (indicating)?

The Court: Wait a minute. Isn't the point what the defendant means by the Westover area, not what he means by the Westover area? The defendant told him he had been in Westover, but how does he know what the defendant meant by it.

Mr. Harrigan: I think there is a pretty recognized area of what the defendant meant by Westover.

Mr. Hassan: Not on that map.

The Court: He can say what he thought was in Westover, but that is not responsive.

The Witness: I don't know where in Westover he was; he didn't say where the apartment was.

By Mr. Harrigan:

Q. But that is the Westover area down there?

A. I can't tell from that.

Q. Harrison Street is near the Westover area, isn't it?

A. Near, but it is not Westover. It is a few
page 992 } blocks from Westover. I can't read the map from
here.

Q. Okay. Did he say anything regarding the waiting for the buses?

A. Yes, sir.

Q. Or moving from bus stop to bus stop?

A. Yes, sir.

Q. What did he say?

A. He said he went to a bus stop to catch a bus. The bus didn't come, and he walked up to another bus stop, still no bus, and he walked two or three different bus stops until he got to the one at Harrison Street where he was picked up.

Q. Did you ask him anything else?

A. We asked how he got wet, and I explained what he told us.

Q. Yes. What was the condition of the bushes that day? Were you out in any of them so you could tell?

A. I wasn't out in bushes.

Q. It rained.

A. Previously.

Ernest R. Davis

Q. The whole day before and most the night, didn't it?

A. It rained previously, yes. I don't know
page 993 } about the night.

Q. Now, up to this point where he told you all
this various information that you testified to, he had not
talked to anybody, had he, other than you detectives? Is
that right? He had made no phone calls?

A. No, sir.

Q. He hadn't talked to anybody, had he, except the special
justice?

A. Yes, yes, he made a phone call.

Q. Did he make that after this interview with you?

A. He made it before.

Q. He did?

A. Yes, sir.

Q. Was that the one where he called his wife?

A. Supposedly. That is who he wanted to call.

Q. How many phone calls did he make to his wife?

A. One that I know of.

Q. All right, how soon after this interview did Mrs. Lane
appear on the scene?

A. Within five minutes.

Q. So the interview was all over by the time she even got
there, isn't that right, or was it still going on?

A. No, sir.

page 994 } Q. Was it still going on?

A. No, sir.

Q. It was over?

A. Yes, sir.

Q. Now, up to this point you still hadn't gotten any war-
rant?

A. No, sir.

Q. What time did Mrs. Lane arrive?

A. About 2:20 p.m.

Q. All right.

Now when you initially took the defendant over to the
Violations Bureau at 1:45, whatever time it was—

Mr. Hassan: If Your Honor please, I wish he would be a
little bit more accurate.

By Mr. Harrigan:

Q. What time was it?

A. Shortly after 1:30, just a few minutes after 1:30.

Ernest R. Davis

Q. When you went over then and advised him of his rights or had the special justice do it, why didn't you get a warrant right then at the same time?

A. I didn't.

Q. That is not what I asked you. I asked you why you didn't.

page 995 { A. We wanted him advised of his rights and to interview him.

Q. Why advise somebody of his rights if there is no charge?

A. We wanted to talk to him.

Q. Can you think of any reason why you didn't get the warrant then?

A. We wanted to talk to him, and have him advised.

Q. Then you talked to him?

A. Yes, sir.

Q. You just told us what he said?

A. Yes, sir.

Q. That interview was over at what time?

A. Approximately 2:15.

Q. What time did you get the warrant?

A. Shortly after three.

Q. What was the big delay from 2:15 to 3:00 o'clock?

A. He was talking with his attorney most of the time, and his attorney was still there.

Q. You don't need him to get a warrant, do you?

A. No.

Q. Aside from his talking to his attorney—

A. Somebody had to stay with him in the office.

Q. Are you telling me you are the only detective up there?

page 996 { A. No, but all of them weren't in there.

Q. How many other detectives were up there?

A. I can't answer that.

Q. There's more than you, right?

A. Yes.

Q. So you could have set up going over to get a warrant at any time, couldn't you?

A. Yes.

Q. Was there any reason you didn't go over and get a warrant between 2:20 and 3:00 o'clock?

A. No, sir.

Q. What happened at three o'clock that made you get a warrant? Did somebody tell you to get a warrant?

Ernest R. Davis

A. No, sir.

Q. You decided that yourself at three o'clock?

A. Yes, sir.

Q. Now, you didn't have any more information at three o'clock than you had at 2:20, did you?

A. No, sir.

Q. Did you check to see what time he left home?

A. No, sir.

page 997 } Q. Why not?

A. I just didn't.

Q. Is there any reason why you didn't?

A. No, sir.

Q. Did anybody else?

A. I can't answer that. I don't know.

Q. How about Pever?

A. I don't know.

Q. Now, at what point was it that he was first advised then that he was being charged with the murder of George Lincoln Rockwell? When you served the warrant on him?

A. 3:22.

Q. That was at 3:22—

A. P.M.

Q. Did you bother to check out anything that he said?

A. I didn't

Q. Did you go back out looking for anyone else?

A. No, sir.

Q. Did they call off the search for looking for anyone else?

A. No, sir.

Q. Did they call off the search for looking for anyone else?

A. I can't answer that.

Q. You were listening to the monitor, weren't you?

A. No. Well, it's there, but you don't hear it
page 998 } all the time.

Q. Did you hear anything—

A. I was at the Violations Bureau. I was in the interview room.

Q. Pever was back down at the station, wasn't he? He was with you?

A. Yes, sir.

Q. Faulconer was back down there?

A. He came with me.

Q. So he wasn't looking any more.

A. No, sir.

Q. Who else? What about Cole?

Ernest R. Davis

A. I don't know where he was.

Q. Who else was down there at the station on the third floor? Half of the police force wasn't over there, was it?

A. I don't believe so.

Q. They had guys on the roof, didn't they?

A. I don't know that.

Q. You don't know that?

A. No.

Q. You testified that all these elaborate precautions were being taken to drive a paddy wagon up to the back door and so forth.

page 999 } A. Yes, sir, but I can't say if it was called off. I don't know that.

Q. You don't know if there were people on the roof with shotguns all around the place?

A. No, I don't.

Q. Do you read the papers?

Mr. Hassan: God, please, I don't think we are going to start now to determine if he knows everything that appears here in the newspapers.

The Court: Sustained.

By Mr. Harrigan:

Q. Let me ask you this. Was Kadel back—

A. I don't remember. No.

Q. You don't remember?

A. No, sir.

Q. Was anybody, to your knowledge, still looking the area over for a suspect with Mexican or Spanish descent wearing yellow socks? Was anybody looking for that guy?

Mr. Hassan: At what time, Your Honor?

Mr. Harrigan: At any time after this man was arrested.

The Witness: I don't know what they were doing; I was in the office.

page 1000 } Mr. Harrigan: That's all.

The Court: Any redirect, Mr. Hassan?

Mr. Hassan: No redirect.

The Court: Detective Davis, with respect to the articles of clothing. They were taken from him, you say, by Detective Wilkerson at the jail?

The Witness: To the best of my knowledge, Wilkerson gave them to me, and then I got the paper bag and put them in.

Ernest R. Davis

The Court: Were you in the room when he was undressed?

The Witness: Well, it's a little separate room. It's right off the main jail office. I was in the main office of the jail along with Mrs. Lane and Pever and the rest of them and the deputy sheriff, and he was asked to step into the infirmary over to the jail office and take his clothes off, and they were taken off and handed out and handed to me.

The Court: Was anyone else in that room besides the defendant and the deputy?

The Witness: Not to my knowledge.

The Court: Then you took them down and put them in the bag and delivered the bag to whom?

The Witness: No, I got the clothes from the page 1001 { deputy in the jail office, got the paper bag in the jail office, put the clothes in the bag at the office and then took the bag and its contents back to the Detective Bureau.

The Court: When you finally put all the clothes in the bag and stapled it shut, to whom did you deliver that bag?

The Witness: I took it down to the police counter at the station and turned the bag and its contents and the property form that I had made out over to Officer Skinner.

The Court: Was he the property clerk or was he just on duty at the desk at that time?

The Witness: He's on duty at the desk at that time.

The Court: All right, sir.

CROSS EXAMINATION (resumed)

By Mr. Harrigan:

Q. Did find any money on Patler?

A. I didn't search him.

Q. So you don't know whether he had it?

A. No, sir.

Q. Did you take any money out of his pockets?

A. No, sir.

Q. Do you know if the jailer took any money?

A. I don't know that.

Q. You were there?

page 1002 { A. Yes, sir.

Q. You weren't paying attention?

A. No.

Q. That is all.

James Clements

The Court: All right, sir. You are excused, Detective Davis.

The Witness: Thank you.

(Witness excused)

The Court: I would be willing to go ahead with somebody if it took 40 minutes or so.

Mr. Hassan: I don't think 40 minutes would be enough. I would be running into serious problems with the next series of witnesses who were at the scene. There will be extensive witnesses. The sheriff can testify; he was in the room. If he can testify as to the officers that were there—

The Court: The clothing?

Mr. Hassan: Yes, sir.

The Court: Sheriff Clements?

Whereupon, JAMES CLEMENTS was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

page 1002 } DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir?

A. Jim Clements, Sheriff of Arlington County.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when the defendant, John Patler, was brought to the jail?

A. Yes.

Q. Were you present?

A. Yes.

Q. Did there come a time when his clothing was taken from him?

A. Yes, sir.

Q. Will you tell the Court and jury how this was accomplished and what you observed and where you were?

A. John was taken into the infirmary which is right off the office, and Wilkerson went in and took his clothes away from him. And I stood in the doorway. I saw him take his clothes off, and they were handed to Wilkerson and then handed to one of the detectives over there. I think it was Sergeant Pever.

Q. Did you see Detective Davis place them in a bag?

James Clements

page 1004 } A. Yes, sir.
Q. Did you see each of these items?
A. Yes.

Q. Did you see the socks?

A. I don't remember the socks. I remember the shirt, the shoes, the pants, the underwear.

Q. Now, prior to this time had anything been taken by your department from Mr. Patler prior to the taking of his clothes?

A. I don't think so. If there was anything taken from him, there would be a property slip there to show.

Q. The only items that are here were the items that were taken by the detectives.

A. This is all I know of. Yes.

Q. I have no further questions.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Did he have any money? Do you know whether there is a property slip showing he had a couple of dollars or a buck, 70 cents or something like that?

A. It would be in the record.

Q. You are not aware of it honestly because you didn't know you were going to testify?

A. No.

page 1005 } Mr. Hassan: I didn't hear that last remark.

Mr. Harrigan: You are not aware of it honestly because you didn't know you were going to testify? I don't think he knew.

The Witness: No.

The Court: I think we sort of surprised him sitting there.

Mr. Hassan: He whispered in my ear that he was present when all this was done. I didn't know he was until he whispered in my ear he was present.

Mr. Harrigan: As far as identifying these clothes, you couldn't identify them, could you? I mean one shirt is like another shirt, isn't it, or one pair of pants like another pair of pants the same color?

The Witness: They look like the clothes that were taken from him. That is all I can say.

Mr. Harrigan: And the towel?

James Clements

The Witness: The towel; I don't know anything about a towel.

Mr. Harrigan: Just checking. Thank you, Sheriff.

The Court: All right, Sheriff. You are excused, sir. Thank you.

(Witness excused)

page 1006 } The Court: Members of the jury, at this time we shall recess until Monday morning. I would like to go on tomorrow with this case, and I imagine you would, too, in order to shorten your time of confinement. Counsel would like to do the same. Unfortunately, the law requires the Commonwealth Attorney to attend all meetings of the County Board required by statute. He has no choice in the matter, and there's a regular meeting of the County Board scheduled to start at nine o'clock tomorrow morning. Apparently, the agenda will run until six o'clock tomorrow evening so that just about takes care of tomorrow. The court would sit, but this case can't take place tomorrow.

Mr. Hassan: If Your Honor please, I hope you will tell them about your problem, too.

The Court: I have a problem, too. I have to hear a case from Northhampton County that has nothing to do with this.

I have discussed with counsel the problem of entertainment of people during the weekend, and at all times actually. There has been no objection to your watching television if one of the sheriffs can quickly turn it off if a news broadcast is turned on. It seemed to me that if the television is so monitored, it is perfectly all right for you to
page 1007 } watch football games or anything else that that media may have to offer. The problem of censoring newspapers for you is such a thorny one that I can't agree on that.

The Sheriff indicates that he can make arrangements for you all to take a nice walk on Sunday. That was before the snow fell. I don't know if you will be able to do that now. I would have no objection to your walking out with the Sheriff or his deputies in groups on Saturday or Sunday if he can arrange that.

I haven't heard from you all directly, but it has been mentioned to me that some of you might have a problem about church on Sunday. I don't know any way that we can allow

you all to separate in order to attend services, and it is not because I am opposed to that, but it is that you really must be kept together and also because it would be impossible to insulate you from people who might rush up to you and say something to you who might know you and thus a mistrial could be occasioned by a very well intentioned remark that somebody might make to you. So if any of you have any religious obligation that is so stringent that you cannot avoid it, I would suggest that you make some arrangement to call your clergyman which can certainly be done and ask him to come down to your motel where you are staying
page 1008 } and perhaps he could come to see you there rather than having you go to church.

If you have any problems, don't hesitate to send me any communications you may have, and I know the Sheriff's office will do their very best to make you as comfortable as they can over the weekend.

We will see you Monday morning at ten o'clock.

Sir?

A Juror: Just a simple question. When you referred to cutting off news, don't you mean local news? Can't we hear about Vietnam or anything of that sort?

The Court: If it is possible to separate it out, I would have no objection to your listening to the general news. The trouble is they are likely to throw in a local news spot without much warning. If the news is one that is separate so that they will have a commercial in between, I will let the deputy let you listen to it to the point where the local news comes on and then turn it off.

A Juror: Your Honor, time was mentioned. I understand that we are now universally from summer time to Eastern Daylight Time, and I assume that all times that are mentioned refer to Eastern Daylight Time.

The Court: Yes.

A Juror: The railroads formerly used to stay
page 1009 } on Standard Time, and if there is any conflict between Eastern Daylight Time and Standard Time, it could make a difference.

The Court: I think I can take judicial notice of the fact that Virginia was on Daylight Saving Time throughout this past summer, and that all times mentioned in August would be on Daylight Saving Time. The only thing you would have to keep in mind is that some time is mentioned occurring somewhere other than Virginia, and that might not be the case but I don't think such has been mentioned up to this point.

We will see you all ten o'clock Monday morning.

(Whereupon, at 6:00 o'clock p.m., the hearing was recessed, to reconvene at 10:00 o'clock a.m., Monday, December 4, 1967.)

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Editor's Note: Reporter's Transcript of Testimony skipped from Page 1009 to 1110.

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page 1112 }

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Mr. Morris: If Your Honor please, we have four witnesses that we subpoenaed for today's appearance. It's quite obvious we are not going to get to them. I wonder if the Court would recognize them and excuse them until Thursday?

The Court: Do you think it will be that long, Mr. Hassan?

Mr. Hassan: I think it will, Your Honor, in connection with the chain of custody of evidence, the exemplaries on the handwriting testimony. I have got at this time some twelve, fourteen witnesses that I had not originally counted on and without them I figured it was going to be late Wednesday or Thursday before we finished.

The Court: All right. Are the witnesses here and know who they are?

Mr. Morris: Yes, Your Honor. They're all in the same witness room.

The Court: Do you want these witnesses sworn and recognized for future appearance?

Mr. Morris: Please, Your Honor.

The Court: Would you administer the oath.

(Four witnesses were sworn.)

page 1113 } The Court: You will not be needed as witnesses in this case until Thursday morning, so the Court recognizes you as witnesses to testify in this case and excuses you until 10:00 o'clock Thursday morning. You are free to go until that time and return to this room, but you are to remain outside the courtroom on Thursday morning until your evidence is called for. You may come into the witness room where you were or the bailiff will show you another place to stay.

Between now and the time you testify you are not to discuss this case with anyone except counsel on either side, that

Lester James Miller

is Mr. Hassan, the Commonwealth's Attorney, or Mr. Harrigan, Mr. Morris, or Mrs. Lane, the defendant's attorneys. You do not have to talk to them if you do not want to but you may speak with them. Do not discuss your testimony with anyone else.

You are excused until 10:00 o'clock on Thursday morning.

Ready for the jury?

Mr. Hassan: Yes, sir.

Mr. Harrigan: Yes, sir.

(The jury was polled.)

page 1114 } Whereupon, LESTER JAMES MILLER, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your address?

A. Tom Miller, McDowell, Virginia.

Q. Is Tom your right first name or is it a nickname?

A. Nickname.

Q. What is your regular name?

A. Lester James Miller.

Q. What is your occupation, Mr. Miller.

A. I have been working for Mr. Sam Ervin.

Q. Have you seen the defendant, John Patler?

A. I have seen him a time or two.

Q. Where was that, sir?

A. At the home over there.

Q. Down in McDowell, Virginia?

A. Yes, sir.

Q. Did there come a time when you saw the defendant target shooting?

A. I don't just remember when it was when he was out there shooting.

page 1115 } Q. Was it this summer?

A. Yes, sir.

Mr. Harrigan: I object to Mr. Hassan leading.

The Court: Objection overruled.

By Mr. Hassan:

Q. Do you have the approximate time when it was?

Lester James Miller

A. No, I just can't remember.

Q. Do you remember the month?

A. No, I don't remember a month.

Q. Now, did there come a time when under oath you had occasion to—

Mr. Harrigan: Objection, Your Honor. May we approach the bench?

* * * * *

Conf.

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page 3 }

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Mr. Hassan: On Friday, the 29th day, September, 1967, Tom Miller, Lester James Miller, was called to testify in the County Court of Arlington under oath and in response to that question, he replied, "I don't know, around about July, somewhere along there."

Mr. Harrigan: That is not inconsistent, "I don't know, around about July, somewhere along there." Our point is that he is trying to impeach his own witness. I don't think that is proper.

The Court: I think it would be necessary for him to proceed a little further to find out whether the witness is truly hostile or he's taken by surprise, rather than just a minor flaw in his recollection. However, if he does turn out to be hostile or takes the Commonwealth's Attorney by surprise, I will permit him to cross-examine by this transcript. I do not think I would have done it on the basis of what he said now.

* * * * *

By Mr. Hassan:

Q. Mr. Miller, when the defendant was shooting, what were you doing?

A. Painting.

Q. What were you painting?

A. Painting the posts along the driveway down there.

Q. When were you painting those?

Lester James Miller

page 1116 } A. What did you say?
Q. When were you painting those?

A. I built a fence along there. Mr. Sam Ervin
had me paint down along there.

Q. Do you remember when you did the painting?

A. I don't know when I done it, along in the summer some-
time.

Q. In summer?

A. Yes.

Q. Do you know about what month?

A. No, I don't.

Q. Do you know whether it was before or after the 4th of
July?

A. I don't know what time it was, in July sometime, I think,
but I don't remember what day it was. I don't know nothing
about it, what time it was.

Q. July of this year, 1967?

A. Yes, sir.

Q. Is that the same time that the defendant was doing the
target shooting?

Mr. Harrigan: Your Honor, I object to his constantly
leading the witness.

The Court: Under the circumstances, I think it is all
right.

page 1117 } Mr. Harrigan: Exception.

By Mr. Hassan:

Q. Do you know what kind of a gun he had?

A. No, I don't know whether he had a shotgun or a pistol
or what. I couldn't paint and watch and see what kind of
gun he had.

Q. I have no further questions of this witness, Your
Honor.

Mr. Harrigan: No questions.

Mr. Morris: No questions.

The Court: May the witness be excused?

Mr. Hassan: He may be excused.

The Court: All right, sir, you are excused and free to
go, thank you.

(Witness excused.)

Mr. Hassan: Walter Kadel.

Walter Kadel

Whereupon, WALTER KADEL, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

page 1118 } Q. Will you please state your name, sir, and your occupation?

A. Walter H. Kadel, Sergeant, Arlington County Police.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when you responded to a radio call to the six thousand block of Wilson Boulevard?

A. I did.

Q. What time did you arrive there, if you know?

A. I would say approximately 12:10.

Q. Would you describe to the court and jury what you saw when you arrived?

A. I arrived on the scene and saw a man lying on the parking lot of the shopping center at 6021 Wilson Boulevard. I approached the man and as I approached him, I recognized him as George Lincoln Rockwell.

Q. Did you observe anything else concerning the man on the pavement?

A. He was lying on his side. He had a little blood on his shirt, he had lain out from the car with a door open as if he had jumped out of the car and the car drifted ahead into the back of another car.

Q. When you arrived there, who was there?

A. The fire department ambulance.

page 1119 } Q. The fire department ambulance?

A. Yes.

Q. What did you observe about the car, if anything?

A. The car was a fifty-eight Chevrolet. There were two bullet holes through the windshield on the driver's side of the car. There was a box of soap sitting on the side of the car on the ground and a newspaper lying on the ground. The motor was running on the car.

Q. What did you observe, if anything, inside the car?

A. Inside the car, there was a piece of metal hanging up in the rear seat on the ceiling of the car, up over the back seat, as if it was part of a slug.

Q. What did you do, if anything?

Walter Kadel

A. I immediately called for the medical examiner, the Commonwealth Attorney, to notify Inspector Cole and Captain Wheatley.

Q. Then what did you do?

A. I called for the ID wagon. I kept the people back from the scene to try to keep them from *distrubing* anything whatsoever and called for more help.

Q. Did there come a time when the coroner came?

A. Yes, sir.

Q. Do you know what time that was?

page 1120 } A. Approximately 12:20.

Q. What did he do?

A. He checked with me George Lincoln Rockwell and pronounced him dead and at the time he was examining, he took a piece of metal from his shirt and tee shirt that was sticking in the wound in his chest, and turned it over to me.

Q. Did there come a time when the ID man arrived?

A. Yes, sir.

Q. Who was that and what did he do that you observed?

A. It was Officer Charles Taylor and he arrived on the scene and took over the photographing of the scene and preserving the evidence in the area.

Q. In the meantime, had other police officers arrived?

A. Yes.

Q. Who, if you know?

A. Officer Roof arrived on the scene, I immediately had him go up on the roof of the shopping center and stay there.

Q. Why did you do that?

A. To keep everybody off of the roof as the information was that the—

Mr. Harrigan: Objection.

page 1121 } The Court: Sustained.

Mr. Hassan: Beg your pardon?

The Court: Sustained at this point.

By Mr. Hassan:

Q. Did there come a time when you talked to Mr. Hancock?

A. I did.

Q. Did there come a time when you talked to Mr. Blake-ney?

A. Only momentarily, just long enough for him to tell me tentatively what happened and that was it.

Walter Kadel

Q. As a result of what they told you, what did you do, if anything?

A. I had Officer Roof up on the roof and stay there.

Q. Did anyone else go on the roof that you know of?

A. Well, Officer Taylor, yes, sir.

Q. And Officer Taylor was the ID man?

A. Yes, sir.

Q. Now, did there come a time when the body of George Lincoln Rockwell was removed?

A. Yes, sir.

Q. When was that removed?

A. That was removed approximately 1:10, 1:15.

Q. 1:10 or 1:15?

page 1122 } A. Yes, sir.

Q. Where was it removed to?

A. Arlington Hospital.

Q. Did there come a time when the vehicle was removed?

A. Yes, sir.

Q. What happened then, if anything?

A. After the vehicle was removed, I was called to report to Arlington Hospital to the morgue.

Q. Before you reported to Arlington Hospital, did you do anything in the area where the vehicle had been removed from?

A. A boy came up to me—

Mr. Harrigan: I object to what any boy might have said to him as hearsay.

The Court: That's premature.

By Mr. Hassan:

Q. What was that boy's name?

A. Mark Forsyth.

Q. What did that boy do?

A. He gave me a spent bullet—or shell.

Q. What did you do with that?

A. I turned it in to the property room.

Q. Did there come a time when you marked it?

A. I did.

page 1123 } Q. When you responded to Arlington Hospital, what did you do, if anything?

A. I went to the morgue and stood by while the autopsy was performed on George Lincoln Rockwell, and also identified George Lincoln Rockwell to Dr. Beyer and Dr. Enos.

Walter Kadel

Q. When you arrived at the morgue, who was there?

A. Detective White.

Q. Who else?

A. Dr. Enos, Dr. Beyer.

Q. What was the condition of the body at that time?

A. It was on the table, disrobed.

Q. Then, what time did the autopsy end?

A. Approximately 4:00.

Q. What did you do then?

A. I reported to the station.

Q. What did you do at the station?

A. I made my report.

Q. Would you get me Property No. 23873?

I show you these envelopes and ask you to examine them and tell me whether or not you know what they contain. Answer yes or no, please.

A. Yes.

page 1124 } Q. How do you know that?

A. I turned this property in to the property room after I came to the station.

Q. Who did you give it to at the property room?

A. Officer Wismer, the property clerk.

Q. I would like to have each of these envelopes marked for identification as Commonwealth's Exhibit 13A and 13B for identification.

(The envelopes previously referred to were marked Commonwealth's Exhibits No. 13A and No. 13B for identification.)

I hand you 13A and ask you, sir, to open that up and examine it, sir, and tell me whether or not that is an item that you marked?

A. Yes, sir.

Q. How did you mark it?

A. I scratched the side of the shell with a paper clip.

Q. What did you scratch?

A. A "W."

Q. I would like to offer this at this time in evidence as Commonwealth 13A.

page 1125 } The Court: Is there an objection?

Mr. Harrigan: Was that the shell case?

Mr. Hassan: The spent casing.

Walter Kadel

Mr. Harrigan: Yes, sir, there is.

The Court: What is the ground of the objection?

Mr. Harrigan: I don't think there's been a proper foundation laid. Mr. Forsyth hasn't testified for some reason or other, they never showed it to him to say that was the one that he found and I think that foundation is necessary. To me it seems like there's a little gap in there.

The Court: You can ask this witness about it if you wish.

Mr. Harrigan: He has no knowledge.

The Court: I will ask him.

Mr. Harrigan: All right, sir.

The Court: Sergeant Kadel, is this the shell casing which was handed to you by the boy, Mark Forsyth?

The Witness: Yes, sir.

The Court: Look at it now and tell me if it appears to be in the same condition as it was when you received it from him, other than for the "W" you say you put on it there.

The Witness: Yes, it appears to be the same, there is a mark inside when it went to the lab.

The Court: Did you put that "W" on there at page 1126 } the time you turned it in into Wismer.

The Witness: Yes, sir.

The Court: Does it appear to be in the same condition as when you did that?

The Witness: Yes, sir.

The Court: All right, the objection is overruled. It will be received as 13A.

(The envelope previously identified as Commonwealth's Exhibit No. 13A was received in evidence.)

By Mr. Hassan:

Q. Now, I will ask you whether or not you marked Commonwealth's Exhibit 13B for identification?

A. The only mark whatsoever is the envelope sealed on this.

Q. Would you open it and see if that is the item?

A. Yes, sir.

Q. I offer that as Commonwealth's Exhibit 13B, Your Honor.

The Court: He hasn't said what it is or where it came from.

Walter Kadel

Mr. Hassan: I intend to ask him, if I get it
page 1127 } offered I want to show it to the defense.

Now, just what is that?

The Witness: That is the part of the bullet that was sticking in Mr. Rockwell's chest and his tee shirt.

Mr. Hassan: How did you get it?

The Witness: Dr. Judson handed it to me as he was examining Rockwell's body.

Mr. Harrigan: We have an objection.

The Court: All right, sir. Do you want to ask any questions on it?

Mr. Harrigan: Yes, sir.

The Court: Go ahead.

VOIR DIRE EXAMINATION

By Mr. Harrigan:

Q. Now, Sergeant Kadel, as I understood your testimony, you didn't mark that particular item at all, is that right?

A. No, I did not.

Q. And you recognize the envelope it was in, right?

A. Yes, sir.

Q. You put it in the envelope, right?

A. Right, yes, sir.

Q. Now, you know since you put it in the envelope, it's been out of that envelope, hasn't it?

page 1128 } A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. So whether this same one was put back in or all of it, you don't know that because you weren't there, right?

A. I wasn't there, no, sir.

Q. I don't think the proper foundation has been laid, Your Honor.

The Court: Sergeant Kadel, did you see Dr. Judson take this from the body of Rockwell, just before he gave it to you?

The Witness: I was right there and when he took it out, I helped him pull on Rockwell's tee shirt and as he pulled the piece of metal out of the wound, he handed it to me. We were both stooping down, leaning over the body.

The Court: Are you able or are you not, by inspecting these fragments, to say whether or not they appear to be the same fragments that you saw at that time?

Walter Kadel

Mr. Harrigan: I object to the question, Your Honor. I don't think that is the test, whether they appear to be the same or not. I think the question is, there is going to be some test made on these fragments and so forth. I just want to make sure they are the same fragments. They
page 1129 } have obviously been out of that case and whether they are just two or whether they have been bent or I don't know what has happened to them in the meantime. I want to make sure that they are the same.

The Court: I will ask him further if they appear to be the same fragments just from their appearance.

The Witness: Yes, sir.

The Court: All right, can you tell whether they appear to be in substantially the same condition as they were in when you turned them in to Wismer.

The Witness: No, sir.

The Court: What is the difference about them?

The Witness: There's two pieces and when I took it, there was one, in other words, there was a little tiny piece.

The Court: You don't know how that came about?

The Witness: No, I don't know how they separated, no, sir.

The Court: Mr. Hassan, I will sustain the objection for the moment. I think this is in the same category as the sock. A chain of custody will have to be established. I will consider it properly identified by him down to the point where it was turned in to Wismer and subsequent testimony, I am sure, can cover it from what happened to it at that point.

page 1130 } Mr. Hassan: The FBI experts will testify.

The Court: I will let it remain as marked for identification, but not received into evidence.

Mr. Hassan: You are letting in the spent casing at this point?

The Court: Yes, sir, on the basis that he initialed that at that time and recognized it as being in the same condition.

Mr. Morris: That is subject to cross-examination, Your Honor?

The Court: Yes, sir.

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Now, during the time from your arrival until you left

Walter Kadel

for the morgue, did there come a time for you to dispatch any radio calls?

A. Yes, sir, I dispatched a call for the coroner, for one. I called for the Commonwealth Attorney, I also called for the crane and also, I may have added something to the lookout if somebody ran up and said something about the description. I think at one time, if you will recall—

Mr. Harrigan: Objection, Your Honor, he isn't responding to any question now.

page 1131 } The Court: The question related only to calls that you put out.

Mr. Hassan: He was about to say that at one time he did.

The Court: All right, let him go ahead and testify.

Mr. Harrigan: Then, I would object to his answer that is going follow up somebody ran up to him and somebody said something, and as a result of what somebody said, he said something. I think it is piling hearsay on hearsay.

The Court: I won't let him testify as to what somebody told him, but he can testify as to what somebody did.

Go ahead, sir.

Mr. Hassan: You can testify as to what you did.

The Witness: I put a call out on the radio that don't necessarily look—

Mr. Harrigan: I object to this, Your Honor, it is based on pure hearsay.

The Court: I don't know what he is going to say, so I can't pass on it.

Mr. Harrigan: All right.

The Witness: Don't just look for a person of Mexican descent. Look for a short man, dark complexion, I believe is the way I put it.

page 1132 } By Mr. Hassan:

Q. Now, did there come a time when you returned to the scene on the 25th day of August after you had been to the morgue?

A. Yes, sir.

Q. When was that?

A. That was later on in the evening after I made my report and turned the property in.

Q. About what time would that have been?

A. 6:00 or 7:00 o'clock.

Q. Without telling me what they said, did there come a time

Walter Kadel

when you interviewed anyone on the 25th day of August when you had returned to the scene or this neighborhood?

A. Yes, sir.

Q. Where did you go?

A. I went to the roof of the shopping center. I went down behind the shopping center, in fact, I went on all the streets behind the shopping center all the way down within a block of Bonair Park, myself.

Q. What were you doing at that time?

A. I was looking for the gun that was used and, of course, I had my men looking also.

Q. What were they looking for?

page 1133 } A. They were looking for the gun that was used in the shooting.

Q. Did there come a time that day when the gun was found?

A. The 25th? No, sir.

Q. What area did you and the men under your control examine on the 25th?

A. From the shopping center down to Larrimore and Liberty Streets, I believe.

Q. Then, did you go anywhere else on the 25th?

A. No, I think I was there until real late, until dark, if I recall.

Q. Did there come a time when you returned to the area on the 26th?

A. Not myself, no, sir.

Q. I have no further questions of this witness.

CROSS-EXAMINATION

By Mr. Harrigan:

Q. Now, Sergeant Kadel, were you in charge of this investigation, so to speak.

A. I was.

Q. Are you still in charge of the investigation?

A. I am.

page 1134 } Q. Where were you approximately 12:00 o'clock on August 25th?

A. August 25th, I was at 7th and South Glebe Road.

Q. Did you receive a call to respond to the six thousand block of Wilson Boulevard?

A. I did not, I heard the call and I responded to a call like that.

Walter Kadel

Q. You went out there?

A. Yes.

Q. Were you the first officer there?

A. I was the first officer on the scene, yes, sir.

Q. Was there a crowd of people around at that time?

A. Not when I got there, no, sir.

Q. Now, how many people were around?

A. I'd say maybe six or seven.

Q. Six or seven?

A. Yes, sir.

Q. What time did you get there?

A. I'd say anywhere from 12:08 to 12:10, 12:11.

Q. Is that an approximation on your part?

A. Yes, sir.

Q. Did you look at the body when you got there?

A. I did.

page 1135 } Q. Did you take a pulse or anything?

A. Yes, sir.

Q. Did you get any?

A. No, sir.

Q. Now, you said the ambulance was already there?

A. Yes, sir.

Q. What were they doing?

A. Standing by.

Q. Had they looked at the body?

A. Yes, sir.

Q. Now, did any other detectives show up?

A. Yes, sir.

Q. Who?

A. Later on, Detective Crickenberger.

Q. How much later on did he show up?

A. Well, actually I can't pin down a time because I don't know.

Q. It was after you, though?

A. Yes.

Q. Now, you were there you say ten after or eleven after, how many minutes did he come after that?

A. I'd say probably within half an hour because most of the men were surrounding the area instead of coming to the scene.

page 1136 } Q. Was he one of them that was surrounding the area?

A. As far as I know and if I recall, I believe I called him up there to assist me.

Walter Kadel

Q. Were there any other detectives that came up there to assist you?

A. I imagine there was, yes, sir.

Q. Who were they?

A. I can't say right now, I don't know off hand. Some of them assisted us in other areas.

Q. So you don't recall a single one?

A. No, I can't say because I don't want to say a man that was there when he was somewhere else.

Q. How about policemen, any policemen up there?

A. Yes, sir.

Q. How many?

A. There were some motormen there. There was Officer Roof, quite a few different uniformed men were there, in fact, I called for them because the crowd was getting big.

Q. How big was the crowd?

A. The crowd got to I'd say a 100 people, or more.

Q. Would it be as many as 150?

A. It could be, yes.

page 1137 } Q. What time was that?

A. That was about quarter of one.

Q. Now, at that point, the car hadn't been moved and the body hadn't been moved, is that right?

A. That was about the time I think we were getting ready to get out of there.

Q. You just testified the body was removed about ten after one, didn't you?

A. Yes, sir.

Q. What was it, was it ten after one?

A. I don't know, it could have been ten of one or ten after one.

Q. All right, then that statement wasn't accurate at all, is that what you are telling me?

A. It was just a wild guess—no, it's not a wild guess.

Q. You didn't make any note when they took the body?

A. No, sir, I did not. I was trying to keep the crowd back so we could get the ID man to get the pictures and everything and get the body away from there.

Q. Did you notice any other Nazi members in the crowd?

A. I did not see any, no, sir.

Q. Were you telling us that they were not
page 1138 } there?

A. I said I did not see any.

Walter Kadel

Q. Did you talk to any witnesses at all when you first arrived?

A. Momentarily, Mr. Hancock, and I think momentarily, to one of the barbers.

Q. All right, now do you remember what time it was when you talked to one of the barbers?

A. No, it was a time after I arrived there.

Q. You mean sometime after you arrived, you mean quite a while after you arrived there, was when you first talked to the barber?

A. No, about ten or fifteen minutes.

Q. So that would make it upwards of 12:30 or beyond there?

A. Yes, yes.

Q. Now, you talked to Mr. Hancock and you talked to the barber sometime after you arrived there, is that right?

A. Yes, sir.

Q. Did you talk to anybody else?

A. Mr. Stuart, momentarily.

Q. All right, he was the gentleman who lives on the corner?

A. Right.

page 1139 } Q. Was that after you had talked to the barber or before?

A. Before, I believe.

Q. Did you talk to another witness?

A. No, I don't think so, the only person I can remember other than that, the Forsyth boy was with a woman, I don't recall her name but there was one woman that came up and talked to me.

Q. Has she testified?

A. I don't know, I haven't been in the courtroom.

Q. You know who has been subpoenaed, don't you? You are in charge of this investigation, aren't you?

A. I don't even know this woman's name.

Q. You didn't write it down at the time?

A. She didn't give it to me.

Q. Now, have you since discovered her name?

A. No, sir.

Q. You said that you put out some sort of message over the air, don't necessarily look for a person of Mexican or Spanish descent, look for a short man, dark complexioned, is that what you said?

A. I believe so, something to that effect.

Walter Kadel

Q. Just which one of those three witnesses
page 1140 } did you talk to that told you this?

A. No witness told me that, I heard a lookout
over the air that stated, look for somebody of a Mexican descent and that is when I cut in and from the information I had received from different people—

Q. You only talked to three, didn't you, Hancock, Blake-
ney, and Stewart?

A. Right.

Q. Anybody else?

A. No.

Q. Okay, from the information that you received, you put
this up?

A. That's right.

Q. Now, which one of those three people did you rely on in
putting this up? It wasn't Hancock, was it?

A. It could have been the barber or Mr. Stewart that told
me the man was dark complected.

Q. Have you listened to the tape?

A. No, sir.

Q. Are you positive this is the lookout you put out, look
for a short man, dark complected?

A. It is similar, yes, I can't say word for word.

Q. Well, it is on the tape, isn't it?

page 1141 } A. It should be on the tape.

Q. If you said that, it should be on the tape?

A. It should be on the tape, yes, sir.

Q. Now, what time did you put out this other description?

A. I can't pin that down, sir.

Q. How long was it after you arrived?

A. I don't know.

Q. You haven't the vaguest idea?

A. No, fifteen, twenty minutes.

Q. After you arrived?

A. Un huh.

Q. That would make it almost 12:00 or 12:30?

A. Even later, even later, I don't know.

Q. All right, and that would make it over half an hour
after the shooting took place?

A. It could be within half an hour.

Q. What description was coming over the radio?

A. I heard on the air that the dispatcher put a lookout to
look out for somebody of Mexican descent.

Q. Mexican or Spanish descent, was that what it was?

Walter Kadel

A. It said Mexican, I am pretty sure.

Q. Dark clothes.

page 1142 } A. I believe so.

Q. Is that so?

A. I believe so.

Q. Yellow socks?

A. I don't recall.

Q. You don't recall the socks?

A. No, sir, I don't recall the yellow socks.

Q. The yellow socks were in every description that was put out, weren't they?

A. I don't know, I didn't hear all the lookout, I was busy keeping the crowd back.

Q. You said that you saw Dr. Judson pick that metal casing off of the body, right?

A. Yes, sir.

Q. Now, in your direct examination, you neglected to tell us whether you saw him pick one piece off or two pieces, which was it?

A. He picked one piece out and I was there and helped him.

Q. That had two pieces in it which we already heard?

A. Yes, sir.

Q. How long did you stay at the six thousand block of Wilson Boulevard?

page 1143 } A. I was called to the hospital and I believe I left the scene around 1:30 to go to the hospital to the morgue.

Q. Now, you said that the body was removed approximately 1:10?

A. 1:10, 1:15, yes, sir.

Q. So you were there for some fifteen or twenty minutes after it was removed, is that right?

A. That's right, I had to get the crane to get the car out of there to.

Q. Then the car was removed during that fifteen or twenty minutes?

A. Yes, sir.

Q. Was that what you were doing during that period of time, taking care of getting the car moved and so forth.

A. And keeping the crowd back, yes, sir.

Q. So you didn't talk to anybody else during that fifteen or twenty minutes?

A. The only one was Mark Forsyth, as I can recall.

Walter Kadel

Q. When did you first hear that John Patler had been arrested, immediately after he was arrested?

A. I heard that they picked up a suspect within half an hour but I didn't know it was John Patler. I didn't know he had any connection with it whatsoever until page 1144 } when I was in the station.

Q. So when did you hear that, about the same time that they picked him up or arrested him?

A. That they picked up a suspect, yes, sir.

Q. Now, did you notice that they were bringing them back to the scene?

A. When I heard that on the radio, yes, sir.

Q. Did you try to get in touch with them and tell them not to do that, to take him to the police station?

A. I did.

Q. Could you get them on the air?

A. No, evidently they turned the radio off.

Q. So they did arrive back at the scene?

A. If they did, I didn't see them.

Q. Who sent the officers over to tell them to leave?

A. There had been some uniformed officers, I believe, if I recall, on the scene, I said, "Get out there and don't let them come to the scene." Where they cut them off, or if they cut them off, I do not know.

Q. You know they cut them off, don't you?

A. I don't know.

Q. You don't know that, okay.

After they picked up John Patler, were page 1145 } other police officers still looking in the area for additional suspects, or did they stop?

A. I imagine there was plenty of them out on foot that did not have a radio that kept on looking, yes, sir.

Q. Out on foot, are you telling us that all the cars came in?

A. I am only telling you that during the period I imagine there was a lot of men walking the park, which would not have a radio with them when they got out of the car and they would have no way in the world to know that a suspect had been picked up.

Q. They have these little walkie-talkie type radios, don't they?

A. No, we have walkie-talkies that we do not carry under normal run-of-the-mill work, it's only when they're out on a special detail do they use them.

Walter Kadel

Q. Did you have occasion to contact anyone to bring some dogs in?

A. No, sir.

Q. Were there dogs brought in?

A. I do not know.

Q. You do not know anything about that?

A. No, sir, if I did, sir, it would be hearsay
page 1146 } and I don't recall.

Q. I asked you if you knew anything about it?

A. No, no.

Q. Are you telling me this is the first time you ever heard about dogs, today? You were in charge of the investigation, weren't you?

The Court: He didn't answer your question, he was thinking about it.

Mr. Harrigan: All right, don't look at Mr. Hassan.

The Witness: I am not looking at Mr. Hassan.

Mr. Hassan: If he wants to look at me, he can look at me, if the jury wants to look at me, they can look at me, I'm not giving any signals.

The Witness: It is vague in my mind that something was said about dogs from Falls Church. I don't even know if Falls Church has any dogs.

By Mr. Harrigan:

Q. You don't even know whether any dogs were brought in from Falls Church?

A. No, sir.

Q. When you left that area of the Wilson Boulevard Shopping Center, you said you went straight to the hospital?

A. Yes, sir.

page 1147 } Q. Who was up there?

A. When I arrived at the hospital, I went into the park. Dr. Enos was there, Dr. Beyer, Detective John Wise, and then Sergeant Shoup walked in.

Q. How long did you remain at the hospital?

A. 4:00 o'clock, 4:00 p.m., it could vary five or ten minutes.

Q. Were you alone as you were going from these various places?

A. I was.

Q. From there, did you come down to the police station?

A. I did.

Walter Kadel

Q. Where was John Patler when you arrived at the police station?

A. When I came in the police station, I went to my office and started to make my report. My office looks into the bigger part of the investigative bureau and when they brought Patler out of the interview room, I got one glimpse and that is the only time I saw him.

Q. What time was it that you arrived at your office?

A. I left the hospital around 4:00 and came straight in, so that would be 4:15.

Q. Patler was still on the third floor at that time?

A. Yes, sir.

page 1148 } Q. Did you give Patler a paraffin test at time to see if he had shot a gun?

A. I did not.

Q. Did anybody?

A. No, sir.

Q. Did they tell you what Patler had told them as to his whereabouts?

A. No, sir.

Q. Did you talk to anybody there, Faulconer or Detective Davis?

A. If I answer your question, that is going to be hearsay.

Q. Let me worry about the hearsay and the court and Mr. Hassan.

A. The only thing I heard the remark that Mr. Patler said he was out walking.

Q. Now, did you talk to Davis or Pever as to what Patler had told them?

A. No, sir.

Q. Did you talk to Davis or Pever about anything while you were in the office on that occasion?

A. No, sir.

page 1149 } Q. Now, this remark that you heard that Patler was out walking, where did you hear that?

A. In the bureau there, I just heard somebody say, I couldn't even tell who said it. I was busy typing up my report.

Q. Then, you were not concerned with what he said at all as to his whereabouts?

A. No, sir, I had my job to do and they had theirs.

Q. Isn't part of your job to check out to see what he says if there's any truth or falsity in it?

Walter Kadel

A. It is when I can get into it. They're busy with their end of it and I was busy with my end of it. I can't take everything at the same time and come up with an answer.

Q. Have you checked out anything that he said as to his whereabouts?

A. I have.

Q. Which part of it, tell me what you understood him to say.

A. It is not what he said, it is what somebody else said.

Q. I didn't ask you that, I ask you what he said to the Detective.

A. No, I don't know.

page 1150 } Q. You still don't know what he said?

A. No, sir.

Q. Now, you said that you were making out your report, I assume that you finished your report and then what did you do?

A. I made out my property form and my report and then we left and went back to the scene.

Q. Around what time did you arrive back at the scene?

A. Probably 6:00 or 7:00 o'clock, I recall we probably stopped and had a sandwich.

Q. You are talking about we now, did somebody go with you?

A. Yes, Detective Faulconer.

Q. Who else?

A. The other men who also were back in the area, Crickenberger, Lieutenant Kadel.

Q. How about Davis, did he go back with you?

A. I don't think so, no, sir.

Q. So Faulconer did, right?

A. Yes, sir.

Q. Pever?

A. I can't recall if Pever went back or not, no sir.

Q. Crickenberger?

page 1151 } A. Crickenberger.

Q. Was this in different cars?

A. Yes, sir.

Q. When you went back, did you all meet some place back there at the scene?

A. At the shopping center.

Q. Then after you arrived back at the shopping center, just exactly what did you do?

Walter Kadel

A. We went up on the roof of the shopping center, looking for the gun.

Q. How many of you?

A. Oh, I guess there's two or three and maybe even a couple of uniformed men. We got up on the roof, we went from one end of it to the other. There's two or three vents, air vents, going into the buildings where we have to look in those.

Q. So you were all up on the roof?

A. On the roof and then we got down off the roof and then we walked the area around the houses behind the shopping center and went down the street to down where we met Lieutenant Kadel.

Q. Did you notice anything unusual about the roof?

A. A lot of water on it.

page 1152 } Q. Did you get wet walking around up there?

A. My shoes got wet, yes, sir, but I stayed on the outer edges. If you stayed on the rim of the roof, you could, at places, keep from getting entirely wet, but some places water was that deep on the roof (indicating).

Q. How deep?

A. About that deep (indicating), four or six inches.

Q. Just what place was the water on the roof four to six inches deep?

A. Probably in the middle, between the stores, and each store is separated by a partition.

Q. It is a run-off, isn't it. Doesn't it run right off the back?

A. This water didn't run off.

Q. Four to six inches on that roof.

A. Four to six inches in some places, yes, sir.

Q. Did you measure it?

A. No, I did not measure it.

Q. How do you know, did you walk through it?

A. No, sir, I couldn't walk through it, it was too deep, it would have went right in my shoes.

Q. So the other detectives saw this, too, didn't they?

A. Oh, yes.

page 1153 } Q. That is who, Crickenberger, who were the other officers?

A. I can't recall their names.

Q. I am sure you can recall.

A. We had so many officers up there, I can't remember what their names were. I didn't make a list of them.

Walter Kadel

Q. You told me two or three.

A. Officer Roof was one there, Charlie Taylor was another.

Q. They were up initially, weren't they?

A. Yes, sir.

Q. Who were the officers up there that night with you?

A. It would be Faulconer and Crickenberger. If there was anyone else up there with us, I don't know who they were. I do not know them by name.

Q. Are you saying somebody else was up there but you don't know who it was?

A. That's right.

Q. Let me show you a picture. Now, here's a picture, Commonwealth's Exhibit 7B. You tell me in back of which sign you saw water four to six inches deep.

A. The water on most of the roof, pretty nearly every section of it, the Econo-Mat there was water.

page 1154 } Q. I am asking you which section was four to six inches deep, was it all four to six inches deep?

A. Some of the roofs weren't as deep as the others.

Q. Just point to the sign which was four to six inches deep, I want to know exactly where it was.

A. All right, Econo-Wash.

Q. All right.

A. And there's two or three vacant stores there where it was heavy on, the water was heavy on.

Q. Just which ones were they?

A. The ones down Wilson Boulevard.

Q. But the Econo-Wash was four to six inches deep?

A. I think so, and Brenners, but Brenners is not there, it is closed, and most of the roof had water on it.

Q. Did your shoes get soaking wet?

A. Yes, sir.

Q. They did?

A. Yes, sir.

Q. Did everybody elses'?

A. I don't know about everybody elses' because at places I tried to walk where the partitions were up higher than the water to keep from getting wet. If you had to follow either side or the other, you would have had to put
page 1155 } your foot in the water and I don't know whether that happened to the other men or not.

Q. It happened to you, though?

A. It happened to me, yes, sir.

Walter Kadel

Q. Did you get your pants wet?

A. No, sir.

Q. How long were you up on the roof?

A. A half-hour, forty-five minutes.

Q. Did you have a ladder to get up there?

A. Yes, sir. We went up around by the Seven Eleven Store.

Q. Did you all come down off the roof at the same time?

A. I don't think so, I think some of them were still up there when I came down.

Q. Now when you came down, then did you start down Liberty Street or Larrimore Street?

A. Yes, sir.

Q. Were you going house-to-house?

A. Detective Faulconer and I were checking the man hole covers and the sewers to look for the gun, it may have been tossed down in the sewer.

Q. How did you check that?

A. We used the tire iron out of my cruiser
page 1156 } and lifted the round lid at each intersection.

Q. Then, what?

A. We didn't find it where we looked.

Q. Could you see down there?

A. Very good, yes, sir.

Q. How many of those did you lift up, all the way down the street?

A. All the way down the street.

Q. So you didn't talk to anybody as you were going down there, did you?

A. I didn't, no.

Q. Now, what time was that that you finished doing that?

A. Probably 7:00 p.m., around in there.

Q. Did you leave the scene?

A. No, we wound up down with Lieutenant Kadel where they found a coat and hat.

Q. Now, at that time, did you meet some Army boys down there?

A. Yes, sir.

Q. How many of them?

A. Two.

Q. That was the mine detector crew, I suppose?
page 1157 }

A. Yes, sir.

Q. Did you have officers in that park during that whole day?

Walter Kadel

A. No, I didn't.

Q. Does that mean that somebody else did?

A. Somebody could have, yes, sir, they may have been running a search party.

Q. Are you saying they weren't down there during the day?

A. No, I didn't say that.

Q. Maybe I misunderstood you, maybe I ought to ask you this, were there officers all over that park during that day?

A. Yes, sir.

Q. How many of them?

A. I don't know, I wasn't down there.

Q. You were in charge of this investigation, weren't you?

A. I was up at the scene.

Q. Did you tell them to detail a bunch of people and send them down there?

A. No, sir.

Q. Did somebody else?

A. I imagine one or the other, a Lieutenant page 1158 } or even a Captain. I don't know who because somebody with authority probably delegated a crew down there, yes, sir.

Q. So you don't have the vaguest idea how many officers were down in that park or what they were doing in there or anything else, is that right?

A. I can't answer that, if they were there, I know what they were doing.

Q. Who sent them down there if you didn't?

A. I don't know.

Q. You don't know that, either.

Did you go down in the park yourself?

A. I did not get to the park myself.

Q. What time did you leave the area that day?

A. I believe we all came in probably 8:30, 9:00 o'clock to the station.

Q. We being Crickenberger?

A. Crickenberger.

Q. Faulconer?

A. Faulconer.

Q. Any other people?

A. Yes.

Q. Is that all you did that day?

A. Well, I imagine we reported to the station,

Walter Kadel

page 1159 } probably talked over our next move for the following day and then went home, yes, sir.

Q. Okay, now up to that point you had still not been informed as to what John Patler had told Pever and Davis in the interview room, I take it?

A. I don't know today what John Patler said to either one of them.

Q. I'd like to have these marked for identification.

The Court: That would be Defendant's B1 and B2.

(The photographs previously referred to were marked Defendant's Exhibits No. B1 and No. B2 for identification.)

Mr. Harrigan: Your Honor, would it be possible to take a five-minute recess?

The Court: Yes, sir, let the jury retire, please. Court will recess for five minutes.

(Whereupon, a short recess was taken.)

The Court: Call the jury.

(The jury was present.)

By Mr. Harrigan:

Q. Sergeant Kadel, I take it then on Friday, the 25th, you did not talk to any witnesses on Liberty Street?

page 1160 } A. I didn't, no.

Q. Somebody else did?

A. Yes, sir.

Q. Who?

A. Detective Crickenberger was canvassing houses.

Q. Did he have a picture with him?

A. I don't know.

Q. Did there come a time when you went to Nazi Headquarters?

A. I did.

Q. When was that?

A. The following day.

Q. What time during the day did you go up there?

A. I believe it was in the morning and probably I was there until afternoon.

Walter Kadel

Q. Did you determine who was at Nazi Headquarters on or about 12:00 o'clock, August 25th?

A. Yes, sir, there were four men.

Q. And what were their names?

A. Robert Bruce, a fellow named Carson, and Mat Koehl.

Q. Anybody else, was there Redfield?

A. I believe it was Redfield.

Q. Now, did you have occasion to ask Matt
page 1161 } Koehl as to his whereabouts that morning?

A. I did.

Q. Did you determine whether he was at the barracks all morning or was out part of the morning?

A. He had been out.

Q. What time did he arrive back at the barracks, did he tell you?

A. 11:30, I believe.

Q. How many cars did they have at their disposal up there?

A. I don't know.

Q. You didn't ask that?

A. No, sir.

Q. Did you determine which car Koehl was using when he was out?

A. Yes, sir.

Q. Which one?

A. A '58 Chevrolet.

Q. The same one that Rockwell used later, is that right?

A. Yes, sir.

Q. What time did Rockwell leave that morning?

A. He left as soon as Matt Koehl got back.

page 1162 } Q. What time?

A. To pin it down, it was between 11:30 and I'd say 11:45, to go to the shopping center, or later, I don't know.

Q. Didn't Koehl give you an exact time?

A. No.

Q. He did not?

A. No.

Q. Do you recall the time as late as 11:50 that he left?

A. No, I don't recall.

Q. Now were any of the other members, Bruce Carson or Redfield, were they there all morning or were they out part of the morning or did you determine that?

A. As I recall, they were all there.

Walter Kadel

Q. Now, did you have occasion to get a listing of guns registered to members of the Nazi Headquarters while you were there that day?

A. I believe I got a list from Inspector Cole.

Q. How about a list from up there, did they give you a list also?

A. Not at that time, no.

Q. Not at that time, you didn't get one?

A. I don't think so.

Q. Did there come a time later when you did get one?

A. I asked them to make me up one.

page 1163 } Q. Did they make you up one?

A. As I recall, they did.

Q. When was that?

A. I don't know, I can't say they did, I am saying I don't remember. I don't remember, I asked them for one—

Q. Didn't Lieutenant Draeger give you a list?

A. I don't recall that, no, sir, because if I got one, I wouldn't get it from Lieutenant Draeger.

Q. You are not sure whether you got one or not, is that your testimony?

A. I got it from Inspector Cole.

Q. Now, did the listing that you got show a 7.63 German Mauser belonged to a one Robert Lloyd?

A. Yes, I believe so.

Q. Did the Nazi Party periodically supply the police department with a list of the weapons they had up there and who owned the weapons?

A. That's right, from what I learned through this investigation that they would make up a list for Inspector Cole, or give him a copy of the list of the weapons at the Party.

Q. I see. Now did you look at the list or at
page 1164 } some listing?

A. The list that Inspector Cole gave me, yes, sir.

Q. How old was that?

A. If I recall, a couple of years old because he told me it was the only copy he had.

Q. Did you get that listing before you went up there or after?

A. After.

Q. Did you have occasion to examine any list that they had on file up there?

A. No, sir.

Walter Kadel

Q. How long did you stay at the Nazi Headquarters on the morning of the 26th?

A. We probably went up in the morning and didn't finish until the afternoon because we interviewed everybody that was there.

Q. Did you take a written statement from everybody?

A. Detective Light.

Q. Did you take a written statement from Koehl?

A. We took notes and interviewed him.

Q. What time did you leave up there that day?

A. Sometime in the afternoon.

Q. Now, at the time you went up there, were
page 1165 } you aware of the caliber of the gun that you
were looking for that morning?

A. No, sir, other than, if I recall, we were looking for something on the 9mm line.

Q. 9 millimeter?

A. Yes.

Q. Were you looking for a pistol or a rifle?

A. As I say, a 9mm line, I don't know whether you could convert one of those into a rifle or not, I don't know that much about them.

Q. Now, did you determine who owned 9 millimeters up there?

A. Yes, sir.

Q. Who was that?

A. Robert Lloyd.

Q. He owned a 9 millimeter, also?

A. He owned a Mauser when he was active in the Party.

Q. Were you left with the impression that he was not in the Party?

A. No, I had the impression he was still in, but was assigned somewhere else.

Q. Is that what they told you.

A. I think so, something along that line be-
page 1166 } cause he was there.

Q. He was there?

A. He was there that morning and he drew me a picture of the weapon.

Q. He drew you a picture of what weapon?

A. The Mauser.

Q. Why would he draw you a picture of a Mauser if you are looking for a 9 millimeter?

A. I say on the 9 millimeter.

Walter Kadel

Mr. Hassan: Your Honor, I would like to object to that, Mausers come in several varieties, including 9 millimeters.

The Court: I had the impression that he testified they were looking for a Mauser 9 millimeter.

By Mr. Harrigan:

Q. All right, did he draw you a picture of a Mauser 9 millimeter.

A. He drew me a picture of a Mauser.

Q. Do you have that picture?

A. No, sir, he did it on a yellow legal pad, I took the sketch he made of the pistol and I sent it to the park where the men were on the search and I have asked and asked and asked and I cannot find who they turned it over to.

page 1167 } Q. It has disappeared?

A. Yes, sir.

Q. Is that what you are telling us?

A. Yes, sir.

Q. Did he draw you a picture of a 7.63 Mauser with the clip in front, isn't that the picture he drew?

A. No.

Q. That is not, right?

A. No.

Q. Now, did you interview Lloyd?

A. On this Saturday, yes.

Q. Did he give you a written statement as to his whereabouts on the 25th?

A. Detective Light would have notes on that.

Q. Now, at that time, every one of those members up there were aware of the fact that Patler had been arrested, is that correct?

A. That would be an assumption on my part, I would imagine they would.

Q. It was in all the papers.

A. That's right.

Q. It was over the radio.

A. Yes, sir.

page 1168 } Q. You and your brother were both in on this investigation, right?

A. Right.

Q. Do people ever confuse you two?

A. Yes.

Walter Kadel

Mr. Hassan: If your Honor please, I'm going to object to that, this is a waste of a lot of time, he is going to be a witness and they're twins.

Mr. Harrigan: Would you just look at these and tell me if you have seen them.

The Witness: One time.

Mr. Hassan: Before there are any more questions, it might be a nice idea if I would be able to examine this.

The Court: I thought you had, Mr. Hassan. Let him see it.

By Mr. Harrigan:

Q. Where did you first see it?

A. Well, I saw ones like these, it could be the same ones, in the Commonwealth's Attorney's Office.

Q. That is the picture—

A. The first time I saw it.

Q. You have been on the police force for how many years?

A. Twenty-five years.

page 1169 } Q. Now, in court the other day, didn't you confuse those two girls back there?

A. Somebody told me I did, they still look alike.

Q. I see, thank you, that is all.

The Court: Any redirect, Mr. Hassan?

Mr. Hassan: No redirect, Your Honor, at this time.

The Court: All right, sir, you are excused, thank you.

Mr. Hassan: I do want him excused subject to call and he has not been advised by the Court.

The Court: All right, Sergeant Kadel, you are free to depart from the Court at this time, but you are on call. You may be called as a witness at a later point in the trial, therefore, do not discuss your testimony with any person except the Commonwealth Attorney or the defense counsel and you do not have to speak with them if you don't want to, but you may speak to them but no one else about the case.

The Witness: Yes, sir.

Mr. Harrigan: I have just one more question. Who else was up at the Nazi Headquarters when you went up?

The Witness: Detective Light.

page 1170 } Mr. Harrigan: I don't mean detectives, I mean other people other than police officers.

The Witness: Other than police officers?

Mr. Harrigan: Other people.

Stuart Crickenberger

The Witness: Other people?

Mr. Harrigan: Other people or friends.

The Witness: There were other people there but they didn't tell me who they were. They were coming in the following day, from what I understand. There were more than four of these on a Saturday.

Mr. Harrigan: Were there quite a few there at that time, when you went up on a Saturday?

The Witness: When I went up there on Saturday, there were quite a few people and also quite a few press, so you couldn't determine who was who.

Mr. Harrigan: That's all.

The Court: Thank you, sir.

(Witness excused.)

Mr. Hassan: At this point, Your Honor, I am going to submit proof of the exemplaries that will be used by the handwriting man whom I expect to call at 1:30.

Also, Detective Crickenberger, I will call him for a limited purpose. Later we will have a little more testimony.

page 1171 } Whereupon, STUART CRICKENBERGER,
was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name and your occupation.

A. Stuart Crickenberger, Detective, Arlington County Police Department.

Q. Did there come a time when you gathered together certain exemplaries for the use of the handwriting expert, which you received from various places, and delivered to the handwriting man?

A. There did.

Q. Now, did there come a time when you obtained a fingerprint card from the Arlington County Police Department?

A. There did.

Q. Who did you receive that from?

A. Officer Gordon Alexander.

Q. Who did you give that to?

Stuart Crickenberger

A. To Jim Miller, the handwriting expert, Washington, D. C.

Q. Did there come a time when you obtained page 1172 } that back from Jim Miller?

A. There was.

Q. When was that?

A. December the 2nd.

Q. Where?

A. At the ID Bureau of the Arlington County Police Department.

Q. Who gave it to you?

A. Jim Miller.

Q. Has it been in your custody from the time you received it from Mr. Alexander to now, except while Mr. Miller had it?

A. That's correct.

Q. I would like to have that, please. I would like to have that marked for identification, if Your Honor please, 14A.

A. Excuse me, there's two pieces to this handwriting.

Q. Two pieces to that A?

A. Yes, sir.

Q. Two cards?

A. Yes, sir.

Q. I'd like to have that marked as 14A-1 and 14A-2.

page 1173 } (the documents previously referred to were marked Commonwealth Exhibit No. 14A-1 and No. 14A-2 for identification.)

That also is included in your testimony as having been received from Alexander?

A. That's correct.

Q. Now, did there come a time when you had occasion to obtain a card from the jail?

A. Yes, sir.

Q. What kind of a card was that?

A. It was a blue card that had John Patler's signature on it. It was a signed release, that is—

Mr. Harrigan: I object to him testifying about the card. I think he can identify it but as to who—

By Mr. Hassan:

Q. Who did you get it from?

Stuart Crickenberger

A. Sheriff Clements.

Q. What did you do when you obtained it?

A. Put it in the envelope and took it to Jim Miller in D. C.

Q. Did there come a time when you got it back from Jim Miller?

A. Yes.

page 1174 } Q. Was it in your custody when Jim Miller gave it to you, except for the time when the sheriff was using it?

A. That's correct.

Q. Did there come a time when you obtained from the Headquarters of the American Nazi Party some exemplaries which you transported to Jim Miller?

A. That's correct.

Q. Who did you receive them from?

A. Officer Beard.

Q. Where did you receive those?

A. We were in the cruiser at Wilson Boulevard and Harrison Street, it was snowing and we were unable to get up the hill into the Nazi Headquarters to get them.

Q. When you received them from Officer Beard, what did you do with them?

A. We put them in the envelope and took them to Jim Miller in D. C.

Q. Did there come a time when you obtained them back from Jim Miller?

A. That's correct.

Q. When was that?

A. December the 2nd of this year.

page 1175 } Q. With the exception of the time that they were in the hands of Jim Miller after you received them from Officer Beard, have they been in your custody?

A. That's correct.

Q. How many pieces of handwriting does that include?

A. Four pieces, five including this tag.

Q. I'd like to have these marked for identification, Commonwealth's 14C 1, 2, 3, 4, and 5.

A. Excuse me, here is another one.

Q. Six.

(The documents previously referred to were marked Commonwealth Exhibit No. 14C-1, No. 14C-2, No. 14C-3, No. 14C-4, No. 14C-5, and No. 14C-6 for identification.)

Stuart Crickenberger

These are all the papers that Officer Beard gave you?

A. That's correct.

Q. I have no further questions of this witness at this time, Your Honor. He will be called later.

The Court: Any questions on this point, Mr. Harrigan?

Mr. Harrigan: We will probably have a few, I page 1176 } would like to look at what I am talking about.

Mr. Hassan: Yes, I want to get them written here, too.

Mr. Harrigan: All right.

The Court: Gentlemen, I imagine Mr. Hassan is not going to move these into evidence at this time, so you will have ample opportunity to examine them.

Mr. Morris: Yes, Your Honor.

Mr. Harrigan: Are you through?

Mr. Hassan: Yes, sir.

CROSS-EXAMINATION

By Mr. Harrigan:

Q. Detective Crickenberger, as I understand your testimony, what you are saying, in effect, is that you picked up these papers and you took them to Jim Miller, does that sum it up?

A. That's correct.

Q. And that is it, you didn't see anybody sign anything?

A. No, sir.

Mr. Harrigan: No further questions.

The Court: Mr. Crickenberger, you are still a witness in the case and will be recalled at a later time. page 1177 } You are excused now, subject to recall by either the prosecution or the defense. Until you have finally been released as a witness and completed all of your testimony, I must instruct you not to discuss your case with anyone except the Commonwealth Attorney or the three defense counsels. You do not have to talk to any of them if you don't want to, but if you wish to you may speak to them, but not to any other person. All right, sir, you are excused.

(Witness excused.)

Mr. Hassan: Is Officer Alexander there?

Gordon Alexander

Whereupon, GORDON ALEXANDER, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation.

A. Officer Gordon Alexander, Arlington County Police Department.

Q. What is your duty in the police department?

A. I am assigned to the identification section.

page 1178 } Q. Did there come a time when you took the fingerprints of the defendant, John Patler?

A. Yes, sir.

Q. I show you two sets of cards, sir, and ask you whether or not you made these sets?

A. Yes, sir, I did.

Q. Did you witness the signature of the defendant on those cards?

A. Yes, sir, I did.

Q. Did there come a time when you gave those cards to anyone?

A. The cards I had taken to the identification section with me.

Q. Well, for the purpose of the handwriting exemplaries, did there come a time when you gave them to somebody?

A. Yes, sir.

Q. Who did you give them to?

A. I laid them on the desk there at the detective bureau of the police department and asked Mr. Patler—showed him where to sign the cards, where it says, "Signature of person fingerprinted."

Q. This was in the detective bureau, the day
page 1179 } you got the prints?

A. Yes, sir.

Q. I think you misunderstood me. With everything in mind, the fact that this handwriting expert desired them for exemplaries, did there come a time when you gave them to anybody?

A. No, sir, I didn't.

Q. You did not?

A. No, sir.

Gordon Alexander

Q. Where were they kept?

A. They were put in the fingerprint file in the identification section of the police department.

Q. When was the last time you saw them before now?

A. That was the last time I saw them.

Q. But there's no doubt that you took those prints and Patler signed them in your presence?

A. Yes, sir.

Q. All right, if Your Honor please, I am going to offer them at this time.

The Court: Very well, is there an objection?

Mr. Harrigan: Yes, Your Honor, he has some others I think he is going to have to put in also, I might as well argue the objection on all of them at the same
page 1180 } time.

The Court: Are you going to move other exhibits now on that basis?

Mr. Hassan: My next witness is Sheriff Clements on the jail card and Matt Koehl on the correspondence.

The Court: You are going to have to take them one by one, Mr. Harrigan because there will be different witnesses testifying to connect each one of those up.

Mr. Harrigan: All right.

The Court: Go ahead.

Mr. Harrigan: It's almost 12:30 now.

The Court: Do you want to resume this then out of the hearing of the jury at this time?

Mr. Harrigan: I would prefer that, Your Honor.

The Court: All right, ladies and gentlemen, we will excuse you for lunch.

Mr. Hassan: If Your Honor please, I would like to get those other two witnesses on. There are only two legal questions, the same question that he can possibly raise will be to the fingerprint cards and the jail card and then there is a different legal question on the other one, but I would like to get that in there so that we would have the other all at one time without having the jury go three times to settle this
matter.

page 1181 } The Court: Would you be willing, Mr. Harrigan, to reserve your objection and I will not admit them into evidence and put on the testimony of all three witnesses and then let the jury go ahead?

Gordon Alexander

Mr. Harrigan: That will be satisfactory, that is what I just suggested.

The Court: All right, did you wish to cross-examine Officer Alexander at this point?

Mr. Harrigan: On these.

VOIR DIRE EXAMINATION

By Mr. Harrigan:

Q. The only question I have, Mr. Patler was in custody, obviously, when you filled out these cards?

A. Yes, sir.

Q. What time did you do this?

A. I don't remember the exact time, sir. I imagine around approximately around 2:00 o'clock, something like that.

Q. You didn't do it until after a warrant was served on him, did you, because there's no need to book anybody until the warrant is served on them?

Mr. Hassan: That is argumentative.

By Mr. Harrigan:

Q. All right, I will ask him, do you ever do it page 1182 } before a warrant is served?

A. Served?

Q. Do you fill out the cards before a guy is charged?

A. They are brought to the identification, this particular identification was done in the detective bureau. After a person is normally charged and the warrant is served, they're fingerprinted and mugged.

Q. So, normally you would do it after the warrant was served?

A. Yes, sir, that is correct.

Q. Do you know what time the warrant was served in this case?

A. No, sir, I don't.

Q. Sometime after 3:00 o'clock, closer to—

A. Well, I couldn't—

Q. You don't know?

A. No, sir.

Q. Did anybody help you in this particular case?

A. No.

Q. Did you recall this incident?

A. The fingerprinting?

Gordon Alexander

Q. Yes.

A. Yes, sir, I do, very well.

page 1183 } Q. Now, you say you didn't get those cards
out of the ID, did somebody else?

A. I imagine so, it would have to be somebody else, I don't know who.

Q. That is all, thank you.

The Court: Officer Alexander, by looking at these cards can you tell me if there is any writing or other marking on them that differs from when you put them in the file?

The Witness: "12/4/67, Commonwealth's Exhibit No. 14A1 for ID," and "B," initials, it looks like "JM," and here's a letter, "A," and the initials "JM" on the left-hand corner and "12/4/67, Commonwealth's Exhibit No. 14-A-2 for ID." That is all, sir.

The Court: How about the penciled markings?

The Witness: That is where I classified the fingerprints.

The Court: Also, where it says "Leave this space blank." there are penciled notations, did you put those in too?

The Witness: Yes, sir, I put this classification in to classify the fingerprints, one card is sent to the FBI, one is kept in our file.

The Court: So with the exception of the notations, the cards appear to be in the same condition in
page 1184 } which you found them?

The Witness: Yes, sir.

The Court: Mr. Hassan.

Mr. Hassan: No further questions.

The Court: Are you going to need him back?

Mr. Hassan: He is going to be a witness in some pictures for another phase of the case. He will be called back for our purposes.

The Court: Mr. Harrigan, did you have something else?

Mr. Harrigan: I have no further questions.

The Court: All right, officer, you are excused for the time being and will be recalled as a witness. So until you are finally through with your testimony in the case, please do not discuss the testimony with anyone except the Commonwealth's Attorney or defense counsel. You do not have to talk to them but you may.

(Witness excused.)

Mr. Hassan: Sheriff Clements.

J. L. Clements

Whereupon, J. L. CLEMENTS resumed the stand, having been previously sworn, was further examined and testified as follows:

page 1185 } DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir, and your occupation.

A. J. L. Clements, Sheriff.

Q. I would like to show you Commonwealth's Exhibit No. 14B for identification and ask you sir, whether or not you recognize that?

A. Yes, this is a jail commitment card.

Q. Is that one of your official records of the jail?

A. Yes.

Q. Did there come a time, sir, when you gave that card to anyone?

A. I didn't personally.

Q. You did not personally?

A. No.

Q. Did you authorize it to be given to anyone?

A. Authorized it, yes.

Q. Who was that to be given to?

A. To Mr. Patler.

Q. What was that purpose?

A. On the back, before anyone can receive mail at the jail, they have to sign, "I, the undersigned, have been committed to the Arlington County Jail."

page 1186 } Mr. Harrigan: Your Honor, I object to reading the whole card.

The Witness: This is authorizing us to censure the mail.

Mr. Harrigan: I understand that.

The Witness: And then any inmate, in order to get mail, has to sign this on the back of the card.

By Mr. Hassan:

Q. Now, did there come a time when you gave that card to anyone?

A. Yes, Officer Crickenberger and Officer Kadel.

Q. I would like to offer that into evidence, Your Honor.

The Court: Did you wish to cross-examine?

Mr. Harrigan: I just have one or two questions, yes, sir.

John Beard

When was that card filled out, if you know, Sheriff?

The Witness: I don't know.

Mr. Harrigan: All right, that's all.

The Court: Sheriff, you are excused, thank you, sir.

(Witness excused.)

Any further witnesses?

page 1187 } Mr. Hassan: Could we swear in Matt Kohl
and Officer Beard?

(Two witnesses are sworn.)

Whereupon, JOHN BEARD, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Officer John Beard, Motorcycle Patrol, Arlington Police Department.

Q. Did there come a time when you had occasion to go 6150 Wilson Boulevard last week.

A. Yes, sir.

Q. Other than showing the world that detectives can't drive in snow, what was the reason for your going there?

A. Due to snow, the cruiser that was going to that location couldn't make it on one of the hills and we were sent up there with a scout car to pick up an envelope of papers from Mr. Koehl.

page 1188 } Q. Did you do that?

A. Yes, sir, I did.

Q. Do you remember what day that was?

A. It was on a Thursday.

Q. When you picked up the papers, what did you do with them?

A. I took the papers back to Wilson Boulevard and Frederick at the Safeway lot where I gave them to Detective Crickenberger and Sergeant Pever in the cruiser.

Q. Did you examine the papers?

A. No, sir.

Matt Koehl

Q. Just delivered them?

A. Yes, sir.

Q. I have no further questions.

The Court: Any questions?

CROSS—EXAMINATION

By Mr. Harrigan:

Q. 6150, where is that on Wilson Boulevard?

A. The location?

Q. Yes.

A. It is on the south side of Wilson Boulevard, almost at the county line.

Q. So you picked up an envelope and page 1189 } delivered it to somebody, right?

A. Yes, sir.

Q. You don't know what was in it, you didn't read anything in it?

A. No, sir, it was just some papers.

Q. That's all.

The Court: Do you need Officer Beard any further?

All right, sir, you are excused and free to go, thank you.

(Witness excused.)

Whereupon, MATT KOEHL, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. Matt Koehl, the address is 6150 Wilson Boulevard, Arlington.

Q. Did there come a time when you gave an envelope of papers to a police officer last week?

page 1190 } A. Yes, sir.

Q. What day was that?

A. I think it was Friday or Saturday.

Q. Where was the police officer at that time?

A. He was at the barracks, our headquarters, in Arlington.

Q. Now, I will ask you to examine these exhibits marked

Matt Koehl

Commonwealth's Exhibit No. 14C for identification, 14C, 1 through 6, and tell me whether or not those are papers which you placed in the envelope to give to that police officer?

A. Yes, they are.

Q. Now, how long have you known the defendant?

A. I have known him quite well for the last four years. I have known him before then, but four years quite closely.

Q. During that period of time, have you been in direct correspondence with him?

A. Yes, I have.

Q. Are you familiar with his handwriting?

A. Yes, I am.

Q. Do you feel that you can recognize his handwriting anytime you see it?

A. I feel quite certain I can spot his handwriting page 1191 } writing and I can pick it out of most any other handwriting.

Q. I show you Commonwealth's Exhibit No. 14C-1 and C-2, which I clipped together, sir, and ask you whether or not, from your association with the defendant the last four years, whether or not that is his handwriting in your opinion?

A. Yes, sir, it is.

Q. I show you Commonwealth's Exhibit 14C-3 and ask you, sir, whether you recognize that?

A. Yes, I do.

Q. Is that all addressed to you?

A. That is correct.

Q. From your association with the defendant, do you recognize that, independent of the signature, to be his handwriting?

A. Yes, I would.

Q. Is that his signature?

A. Yes, sir, it appears to be.

Q. I will show you Commonwealth's Exhibit 14C-4 and ask you sir, whether or not, from your association and experience with the defendant, you recognize that to be his signature?

A. Yes, sir.

Q. And 14C-5, do you recognize that to be page 1192 } the printing and writing of the defendant by virtue of your association in the past four years?

A. Yes, sir, I would say it is, I didn't receive this, but I would say it is.

Matt Koehl

Q. And I show you 14C-6, sir, and ask you whether or not you recognize that as the signature of the defendant and his correspondence to headquarters.

A. Yes, sir, both of them, both signatures.

Q. I offer those, Your Honor.

The Court: Does the defendant *with* to cross-examine on this point?

CROSS EXAMINATION

By Mr. Harrigan:

Q. Let me show you these three signatures, how many of them are John's handwriting and how many of them aren't, or are any of them John's handwriting?

A. I would say they all have a resemblance, there is a resemblance, but none of them appear too much, except the last one, to be like his usual signature as I have seen it.

Q. So you say the last one, with some degree of assurance?

A. Well, I imagine that somebody could, by carefully taking his time and writing in a different manner, all page 1193 } most anybody could do that, but as far as the usual appearance of the signature, the last one bears a closer resemblance than the others.

Q. You would say the last one, with some degree of assurance, is and the other two?

The Court: That isn't what he said, Mr. Harrigan.

By Mr. Harrigan:

Q. That bears a closer resemblance?

A. I would say it is, I am no handwriting expert.

Q. I would like that marked for identification.

(The document previously referred to was marked Defendant's Exhibit No. 15 for identification.)

You are not the head man of the American Nazi Party, is that right?

A. I am the national leader of the National Socialist White People's Party.

Q. What is that again?

A. The National Socialist White People's Party, that's

Matt Koehl

been the designation of the party since, I believe, the 1st of January, 1967.

Q. Did somebody call you up and tell you to page 1194 } round up some documents?

A. I had samples of—

Q. No, the question was, did somebody call you up and tell you to get together certain documents?

A. The police wanted to see—

Q. Who?

A. Who?

Q. Who, yes?

A. The investigator in the case wanted to see samples.

Q. Do you know which investigator?

A. I don't know specifically, but there may have been several.

Q. They told you they wanted samples of John's handwriting, is that right?

A. That's right.

Q. Did you have quite a few samples?

A. A reasonable large number, yes, sir.

Q. Now, who picked the samples that you delivered to the police, you?

A. There were just a whole big batch and I just turned them over.

Q. How many exhibits are there, the six exhibits, was this all of them? All you could find?

page 1195 } A. No, there are other samples of his handwriting.

Q. So you picked those out?

A. Among others, that's correct.

Q. You picked these out, that is all I am asking.

A. I just got a batch of his writing, printing, handwriting, the whole works there, and turned it over to the authorities.

Q. There are six of them here, is that right?

A. I believe so, five or six.

Q. Was this all you could find?

A. There are other samples.

Q. I see. That is all for now.

Mr. Hassan: This witness, likewise, will be recalled for other purposes at a later date.

The Court: All right. Mr. Koehl, you are now excused subject to recall by either the prosecution or the defense in

Matt Koehl

this case, and the same caution given to you about discussing the case still holds. You are now excused.

(Witness excused.)

Ladies and gentlemen, we will break at this time until 2:00 o'clock for lunch. The court will recess now until 2:00 o'clock.

(Whereupon, the luncheon recess was taken.)

AFTERNOON SESSION

page 1196 } The Court: Mr. Harrigan and Mr. Hassan, I have received a communication from the jury which I will allow you to inspect.

Mr. Harrigan: We intend to produce that type of testimony.

Mr. Hassan: I think the jury should be instructed. Your Honor, that they are to come to no conclusion concerning any matter in this case until the matter is completed, then, if they have questions and want additional testimony before either side rests, that is fine, but they're trying to preguess the prosecution and the defense. I think they're trying to weigh things too much at the time things are presented.

Mr. Morris: Your Honor, in line with that, it is a good comment by the prosecutor, but there's been no such testimony at the time of this case as to weather conditions, rain, that we will tell the Court at this time, we do have a certified Weather Bureau report that we will let Mr. Hassan take from us if he wants to introduce it himself.

Mr. Hassan: I have the conditions right at the time and I have a lot of questions to go and 90 percent of these questions asked today will be entirely unnecessary. They are trying to draw a lot of conclusions from a lot of things which will never get into evidence.

page 1197 } The Court: I anticipate that you will probably cover most of these matters on either one side or the other of the case, so I don't think it is really necessary to make any comments on them. They will receive this in good time and I will, at the end of the day if you all remind me, again instruct them not to come to any conclusion. This, today to me, merely indicates that they are considering

the case in considerable detail and paying close attention to it, which is good.

Mr. Hassan: Maybe they are discussing, too.

The Court: I will give them further instructions.

Mr. Morris: We would appreciate it too, Your Honor, if you would inform the jury that things like this may, or may not, come out from either side as you just indicated.

The Court: Mr. Harrigan, are you now in a position to argue? I gather the Commonwealth has moved the admission into evidence of 14A through 14C of handwriting exemplaries.

Mr. Hassan: I understand that 14A-1 and 2, and 14B have been admitted and 14C-1, 2, 3, 4, 5, and 6 were offered.

The Court: I did not admit them. I told them that I would not admit them until after defense has been heard on it and I think they indicated an intention to object and page 1198 } didn't argue it so that you could get through these connecting witnesses before lunch.

Is all the evidence completed on that now?

Mr. Hassan: If you don't admit them, then I, of course, will have one more witness on 1, 2, 3, 4, 5, and 6, and I have additional exemplaries which I may present.

The Court: 14C-1 through 6, is that what you are speaking of, Mr. Hassan?

Mr. Hassan: Yes.

The Court: All right, Mr. Harrigan, I will hear you on your objection.

Mr. Harrigan: Could I have the exhibits? I might as well touch them one at a time.

The Court: 14A-1 and 2 are the fingerprint cards, 14B are the jail cards, and 14C-1 through 6 are the documents that Matt Koehl testified to.

Mr. Harrigan: As to 14A-1 and 2, aside from the signature on this particular card, there are a great many things on the card which have not been proven and are not in evidence. There is a current arrest record wherein it shows him charged with murder on the card.

Mr. Hassan: If, Your Honor, please, I think we can save a lot of time. There are only portions of each page 1199 } of these exemplaries which the fingerprint man is going to use and all he is using off the fingerprint cards is the known signature which was placed there by the defendant. He requested advice of his counsel before he signed it, because I was present and Mrs. Lane was present and she told him it was all right to sign it. That is all.

He has taken, by photograph, that portion out of the card, he has taken only the signature off of the jail card and none of these will go to the jury, only his diagrams which do not contain any of these things that Mr. Harrigan is talking about. And then, of the one through six, one of those is his signature, I think that is the tag. Then, there are certain words that are printed that match "confidential" that I used in connection with "confidential" that are going in so that the contents other than formation of letters is not going before this jury. These are only exemplaries in handwriting. These are the exhibits made from these items, this is what will go to the jury.

The Court: You are not moving the entire body?

Mr. Hassan: Only these things which the handwriting man used and put on that, none of the exhibits will go to the jury.

The Court: Do you object under those circumstances? page 1200 }

Mr. Harrigan: The only objection that I have to the signature on the card here would be that, in view of the testimony that has been elicited thus far in the case, it is apparent that this signature card or this card with his signature on it was not even taken until many, many hours after he was apprehended, that he was detained at the Arlington County Police Station until a warrant was obtained sometime. The evidence, I think, indicates it was 3:22, which was some almost three hours after he was arrested, that he was not notified in great portion during this time and I think the mere detaining him over there for that extended period of time was contrary to the Virginia Code and it was unlawful detention under the Virginia Authority where 52-20 states that they should be taken forthwith in front of a special justice, charged, and so on. This was not done in this case and as a result, these were obtained as a direct result of his unlawful detention, so on these cards here, the fingerprint cards, we would object on that ground.

Aside from that, then Mr. Hassan is saying that is going in for the signature itself, the argument on the rest of the card is obviously now moot. That would be our position on that, but these have been flashed in front of the jury and shown to the jury and so forth. I think that, in page 1201 }

Secondly, the same thing with the jail card. There's no foundation for the signature on the jail card to go in. The only testimony was from Sheriff Clements who

said that he was sent there and he doesn't know. It was filled out but he wasn't there and he didn't see it filled out so I don't think a proper foundation was laid on that.

I take it the Commonwealth did not intend to introduce all of the items here and their contents, including the one with the big Nazi insignia on the top.

Mr. Hassan: Only the signature on that one.

Mr. Harrigan: Well, this is Commonwealth Exhibit 14C-6, is that right?

Mr. Hassan: Yes, sir, only the signature off that one.

Mr. Harrigan: Now, the foundation for that has been Major Koehl who said that in his opinion, that was the signature of John Patler. He has demonstrated no qualifications as an expert and it is just a mere expression of opinion by a layman. We feel that that is not sufficient foundation and that objection goes to Commonwealth's Exhibit 14C-1 which was a letter.

Mr. Hassan: All of that goes in, all of this page 1202 } printing goes in, and that printing from there down (indicating).

Mr. Harrigan: The letter and the tag signed "Captain Patler"?

Mr. Hassan: The signature on the tag.

Mr. Harrigan: I feel that improper foundation has been laid for that.

Commonwealth Exhibit 14C-3, where it is signed "Sieg Heil! Captain Patler," which part is going in on this? All of it?

Mr. Hassan: From there down to here, this portion (indicating), that is a printed signature. That is not on that portion, just that portion there (indicating), and then the next one, the "PS." That is a letter to Matt Koehl from John Patler.

Mr. Harrigan: On this, we don't think a proper foundation has been laid, it is a printed letter, not a written one.

Mr. Hassan: That is for comparison of printing of "confidential," Exhibit 5G.

Mr. Harrigan: And 14C-5.

Mr. Hassan: Only the "PS" of that letter is being used and that is directed to Major Koehl.

Mr. Harrigan: We would object to that impage 1203 } proper foundation of simply Major Koehl saying that it appeared to be Patler's writing and that he is familiar with it.

In addition, we are not waiving any of our objections on

what this is leading up to and that is, I think, all of this is not material, in view of the fact that it is all apparently directed towards getting a letter in which started out "Dear Commander." Since that letter is not dated, there's been no showing of how remote in time, how long ago, that letter was written. Our position still is that it carries absolutely no threat or any inference of any threat in the letter, it is purely conciliatory and friendly and has no bearing on the case. If all of these exhibits are directed towards that particular letter an additional objection we have is that these are merely a foundation for a letter which is not admissible in any defense, so we would object to them on that ground. If I understand, that is the proffer why these are being introduced.

Commonwealth's Exhibit 14C-4, I understand, is just the signature and not the American Nazi emblem.

Mr. Hassan: No, just the signature.

Mr. Harrigan: We would object to that on the grounds it is improper foundation, merely on Matt Koehl's belief that he believes this to be Patler's signature.

page 1204 } The Court: To whom was that addressed?

Mr. Harrigan: To the commander.

The Court: What is sought to be introduced in 14C-3?

Mr. Hassan: That is starting at the beginning of the letter, starting with the word "Major" and the first seven lines under "we don't."

The Court: These are the purposes for comparing printing?

Mr. Hassan: In that section there are seven combinations of letters that are printed that the handwriting man uses in connection with the identification of a questioned word, "confidential," at the head of Commonwealth Exhibit 5G.

The Court: How about C-2?

Mr. Hassan: C-2, there are four lines from that letter which has eight combinations of letters and formations of letters that the expert will use from that portion which says "Major," "Super Russia," etc.

The Court: How about C-1?

Mr. Hassan: C-1 is a signature.

The Court: May I see those again, please?

Mr. Hassan, how do you propose to proceed, by admitting parts of these for purposes of exemplary
page 1205 } identification?

Mr. Hassan: Excuse me, these will be the exhibits.

The Court: You do not propose to take these things which

are marked for identification for exhibits at all, but parts of them?

Mr. Hassan: Yes, sir, when I bring my next witness in, he will name what parts of them, and will have copies of parts.

Mr. Harrigan: We would one further motion on all of these and that is to strike all of the testimony concerning these matters since it appears that the proffer of this testimony is merely a foundation for introducing that "Dear Commander" letter into evidence and if that is not admissible, then our position is that all of this is not material, not relevant to anything on issue, therefore, all of the testimony concerning his handwriting should be stricken from the record and we so move at this time.

Mr. Hassan: If Your Honor please, that point was argued when the letter was offered and the Court has ruled on all of those objections and said that it would not admit it until the Commonwealth had proceeded to prove the signature.

The Court: I said establish a foundation which really covered nearly all of the points that the defense page 1206 } has made.

Mr. Hassan: There were five or six points the Court ruled on, but the signature was one.

Mr. Harrigan: I believe there was no ruling on whether the letter was admissible or not, proceeding a foundation which was laid.

The Court: The points that I noted that were made by the defense at the time were these: One, that the letter is a photostatic copy and does not meet the best evidence rule.

Secondly, that there was no evidence that it was taken from Rockwell. Now, that was covered by Detective Wise's testimony later on.

Third, that it was not dated and, therefore, does not connect with relevance to the case because it cannot be told when it was written. I take this question to still be unsettled.

Four, nothing in the letter has any probative value in the case.

Five, no foundation established that it came from Patler, that is what this evidence seeks to meet.

Finally, that it was hearsay, which means, I gather, that it did not, in its body, contain admissions by page 1207 } the defendant which would have rendered it admissible under exception of the hearsay rule.

It seems to me that in view of the Court's ruling which was simply that the proper foundation has not been laid, that the Commonwealth certainly is entitled to go ahead and

seek to lay that foundation, that is exactly what they are trying to do at this point. So, for that purpose, the Court will allow them to attempt to prove the genuineness of the signature and to meet these other objections.

Mr. Hassan: Now, if Your Honor please, I understood you to rule on all the objections except the signature the other day and I would like to the stenographer bring in your ruling, because we went through each one of these points that you have just named and when we completed them and had our legal argument, you said that you were not going to admit the letter until there had been proof of the signature and that the objections had been overcome.

The Court: I don't recall.

Mr. Hassan: I wrote it down.

The Court: What I have in my own notes at this point is that it was excluded on the basis of the foundation, thus far laid.

Mr. Hassan: We came back and we argued page 1208 } the legal points in connection with it.

The Court: I remember one legal point that you did not argue and that is the best evidence rule.

Mr. Hassan: We did argue that, Your Honor, because, if you recall, I said it wasn't a question of best evidence, it is a question of *res gestae* on the deceased at the time of the crime. The *res gestae* was admissible purely on that ground and we had that argument to some length.

The Court: I am not satisfied on that point, but I won't foreclose you on it.

Mr. Hassan: I gave you three citations in regard to the content of the letter which referred to previous difficulties.

The Court: I remember your citations but they related to the admissibility of letters on the basis—

Mr. Hassan: On two points, *res gestae* and previous difficulties.

The Court: That relates to the content of the letter?

Mr. Hassan: That's right.

The Court: I am not talking about that, I am talking about the question of why the letter is a photostatic copy, rather than the original. The lack of the original has page 1209 } to be explained.

Mr. Hassan: Without Rockwell, how can we find out why he carried a photostat instead of the original?

The Court: According to the authorities I have read on the subject, the burden would still be on the moving party that is diligent search had been made for the original and it had not been found. The letter does contain some internal

evidence as to why the letter might not be there but it is merely an inference. You have got to go further than that than to rely on the contents of the letter as to what happened to the original, but some effort has to be shown. But if it is not there and the absence cannot be explained, I think under the best evidence rule itself, you are entitled to put in a copy, that is getting ahead of this.

To get back to the immediate point with regard to the signature cards, which are the fingerprint cards, which are 14A-1 and 2. The Court considers that since all that is sought to be introduced from those cards is the signature, there has been direct testimony from an eye witness as to the affixing of the signature there, I think that is sufficient proof of its genuineness. The objection is overruled and as to the extent of the signature there on 14A-1 and 2 are admitted into evidence.

page 1210 } (The documents previously identified as Commonwealth's Exhibits No. 14A-1 and No. 14A-2 were received in evidence.)

Mr. Harrigan: Exception for the reasons stated.

The Court: As to the jail card, 14B, the sheriff testified as to obtaining custody emanating from the jail, but no one has yet testified that Mr. Patler, in fact, did sign it, so there's no proof to the genuineness of that signature. Since only the signature is sought to be admitted on that card, it will not be admitted on the basis of the foundation thus far for it.

Mr. Hassan: I'd like to take exception to that, Your Honor. That is a routine business record taken from the sheriff's office on that.

The Court: I will not allow that to come in unless there is some evidence as to someone seeing him sign it and know he did sign it.

As to 14C-1 through 6, it appears to me that the evidence produced by the Commonwealth is sufficient that this is recognized as the writing of the defendant by someone who is familiar with it and corresponded with him often, received some of these items personally and could recognize the others as his. This meets the test of the established handwriting exemplaries within the authorities that I have read on the subject, and they will be received to the limited extent that they are offered, that is not the entire document but just those parts which the Commonwealth seeks to show.

page 1211 }

(The documents previously identified as Commonwealth's Exhibits No. 14C-1, 14C-2, 14C-3, 14C-4, 14C-5, and 14C-6, were received into evidence.)

Now I will ask the defense to look at these photographs which are the only part that the Commonwealth says they want to show the jury and ask you if you are satisfied that they may go to the jury in lieu of these originals.

Mr. Hassan: I don't intend to even present the original, in fact, I am going to ask to withdraw the fingerprint cards and jail records as permanent records of the police department and substitute photographs.

The Court: Do you want to compare them with the originals, from which they were taken, to see if they're sufficient?

Mr. Hassan: We can't proceed with this until
page 1212 } I can get the sheriff to get his deputies in here
and find out who in his jail does the work. I
don't know why the police records are not acceptable. Every-
thing I have read in connection with the exemplaries and
ordinary business records are acceptable.

Mr. Harrigan: These have not been marked, I take it.

The Court: No, they haven't.

Are you satisfied that they are copies of the pertinent parts of these exhibits?

Mr. Harrigan: That is what they purport to be, apparently.

Mr. Hassan: Because the man who made them is going to be the one who is going to testify, Your Honor.

The Court: Are these made by the expert who will testify?

Mr. Hassan: Yes.

The Court: All right, we will let him testify on these.

Do you gentlemen want to recess while you get to this next point?

Mr. Hassan: I would like to have a recess while we wait for the deputy sheriff who had him sign the card, it is routine.

The Court: Take a brief recess.

page 1213 } May I see counsel for a moment?

(Whereupon, a short recess was taken.)

The Court: I have concluded that letter contains a sufficient amount of internal evidence of possible motivation or intent of the relationship between parties that it meets the hearsay requirement. I think it could go to the jury if two things are established. One, it's genuineness and I take this

handwriting testimony to be proof of that or an effort in that direction, and two, the best evidence rule, so I want to put you on notice as to that. I'm not satisfied yet that the photostatic copy can be received but if you want to be heard on that as to why that is *res gestae* and satisfies that I won't foreclose—

Mr. Hassan: The easiest and simplest way is to do what you want, and if that is what you want, I will put on a parade of witnesses to show we can't locate that original, but don't think we didn't try.

The Court: In order for the copy to be admissible, it has to be shown that the effort was made.

Mr. Hassan: In view of the request of the defendant that it be returned to him—

Mr. Morris: How about the date, Your Honor, have you ruled on that?
page 1214 } Mr. Hassan: The date can be established on this.

The Court: It does relate to a historical event which Mr. Hassan indicated he will tie up, and I assume he will.

Mr. Morris: Then, with the span of time in between, it still wouldn't have any value.

The Court: I don't have any idea as to what the date is.

Mr. Hassan: June of '66, I don't like to be held to it, but I think June 26th, when the tape recording of Stokely Carmichael was made, I think it was June 26th.

Mr. Morris: About fourteen months before the assassination.

Mr. Hassan: We are going to show a motive that goes over a longer period of time than fourteen months.

The Court: I think those things have got to be done before it could be admitted.

Mr. Hassan: Your Honor, you are still not satisfied as to the best evidence rule, I want that clarified, what is your other objection?

The Court: Of course, the handwriting.

Mr. Morris: And, you haven't ruled on the date.

The Court: I haven't ruled on the date so I
page 1215 } will let the Commonwealth try to establish those things and I will hear whatever argument you have to make after he has established what the date is, as to how close in point of time it would have been. I simply don't know this point, how close it would have to be to be relevant.

Ready for the jury?

Mr. Hassan: Yes, Your Honor.

James Miller.

James T. Miller

Whereupon, JAMES T. MILLER, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. James Thomas Miller, I am a question document analyst, Metropolitan Police Department, Washington, D. C.

Q. What is your education and training for the position which you hold, sir?

A. My formal educational background is in business administration with an accounting major, and
page 1216 { later I went to school at George Washington University for a few semesters to study chemistry only.

My background in the identification field would be as follows: I first started working in the identification field as a photographer fingerprint man and did some preliminary blood testing for the police department between the years of 1951 and 1954. I testify, incidentally, in Court as an expert witness in all three of these fields. In 1954 I began with Mr. Gullickson. Mr. Gullickson was in charge of the document lab at the Metropolitan Police Department at that time, I worked full time with Mr. Gullickson and trained with him from 1954 to his retirement in 1962.

During that same period, I spent some short periods at the Veterans Administration's Laboratory with Mr. Schmidt and Mr. Gazelle, and at the Post Office Lab with Mr. Summerfelt. These are very short times.

I have read most of the texts that are published and acknowledged as leading books in this field and have attended numerous seminars and instructional meetings in this question document field.

Q. Are you a member of any professional organizations in the question document field?

A. Yes, sir, I am a member of the International
page 1217 { al Association for Identification and I am a member of the American Academy of Friendship Sciences.

Q. Have you conducted any training courses or lectures in the field?

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A. Yes, sir, I have.

Q. Where, and what courses?

A. Well, I have regularly conducted the in-service training courses for the Metropolitan Police Department, both for the private and recruit sections, and for the officers, detectives, and officials in the training program, and I have lectured at the University of Maryland Law Enforcement Institute and have spoken at seminars for the International Association for Identification and the American Academy of Friendship Sciences.

Q. When did you first testify as an expert in the question document field?

A. In August 1956, I believe.

Q. Since that time, in what Courts have you qualified as an expert to testify?

A. I have testified in both the Courts in the District of Columbia, the Court of General Sessions, and the United States District Court. I have testified in the State of Maryland and in the State of Virginia, I have prob-
page 1218 } ably testified in between two and three hundred
times. I receive an average of about two hundred summonses per year.

Q. For testimony in the question document field?

A. That's correct, sir?

Q. I would like to show you Commonwealth's Exhibit 5G for identification, sir, and ask you whether or not you have made a study of this question document in regard to the printing and the signature?

A. Yes, sir, I have.

Q. I show you Commonwealth's Exhibit 14A-1 and 2, and ask you whether you have studied them?

A. Yes, sir, I have.

Q. I show you Commonwealth's Exhibit C-1 and C-2 and ask you whether you have studied them?

A. Yes, sir, I have examined both of them.

Q. And Commonwealth's C-3, 4, 5, and 6?

A. Yes, sir, I have examined those also.

Q. Now, did there come a time, sir, when you prepared any exhibit of the portions of the exemplaries which I have just presented to you?

A. There did, sir.

Q. Do you have those there at this time?

A. Yes, sir, I have, this is one group, this is
page 1219 } the second group (indicating).

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Q. What have you prepared here, how many copies? Are they all copies of the same thing?

A. Yes, sir, I have prepared two charts, one is a folded chart, hinged in the middle, I have seventeen copies of those. And, the other is a single sheet, I have seventeen copies of those. The two exhibits, all seventeen of the copies, are exactly the same in each group.

Q. They are from selected portions of the exemplaries which you have examined?

A. That is correct, sir.

Q. If, Your Honor, please, I would like to have one set of these marked for identification and submit them all to the defense counsel to examine. The purpose of the many numbers is so that the Judge and all of the defense counsel and each member of the jury can look at the exhibits during the testimony of the expert, Your Honor.

Now, if Your Honor please, I would like to offer these in evidence at this time.

The Court: Did you establish, Mr. Hassan, from which Commonwealth's Exhibits for identification they were made?

Mr. Hassan: They were made from all of page 1220 } these which you have allowed me to present to him.

The Court: This does not include the jail card?

Mr. Hassan: It does not.

The Court: Gentlemen, do you have an objection to the reception in evidence of these exemplaries?

Mr. Harrigan: The only objection I have is the same one I have already stated.

The Court: All right, sir, the objection is overruled and they will be received in evidence as 15A and 15B for the Commonwealth.

(The documents previously referred to were marked Commonwealth's Exhibits No. 15A and 15B and received in evidence.)

Mr. Harrigan: Exception, on the ground previously stated.

Mr. Hassan: Your Honor, May I give each one of the jurors a copy of this exhibit?

The Court: Is there an objection to that?

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Mr. Harrigan: The same objection as the other, it is a continuous objection.

The Court: All right, the record will show the continuing objection.
page 1221 } If you do not object to the multiple copies being submitted to the jury, I suppose it would expedite matters, rather than passing these from hand to hand.

Mr. Harrigan: I understand that; the only thing I don't think I can object to the admission and not to showing it to the jury, but for the record, I still have the same continuing objection to admissibility—

The Court: Of the writings, in the first place.

All right, let them be shown.

By Mr. Hassan:

Q. Now, sir, as a result of your examination of the original, did you prepare this exhibit of what you found therein?

A. Yes, sir, I did.

Q. Now, with regard to the question signature in Exhibit 5G, have you come to an opinion as a result of your examination?

A. Yes, sir, I have.

Q. With regard to the printing of the word, "Confidential" in Exhibit 5G, on the basis of your examination, have you arrived at an opinion with regard to who did that printing?

A. Yes, sir, I have.

Q. Would you tell us what your opinion is in page 1222 } regard to the signature?

A. This is the signature "J. Pater."

Q. On Exhibit 5G?

A. Right. My opinion would be that John Patler is the writer of the various documents here we have marked 14-1, 2, 3, 4, 5, and 6. There's been seven documents. I will refer to these as Government's 14 to keep it simple rather than naming each one by number, just Government's 14.

The John Patler, the person who signed his name on these Government documents marked Exhibit 14-1 through 7, is the person who signed the name, "J. Pater," P-a-t-e-r. It appears to be on the letter marked Government's Exhibit 5G.

Q. Do you have an opinion in regard as to who printed the word "confidential" on Exhibit 5?

A. I have, sir.

Q. What is that opinion?

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A. That opinion is that John Patler, the person that hand printed several of the documents in Government's Exhibit 14, printed the word "Confidential" on the top of the letter marked Government's Exhibit 5G.

Q. Now will you explain to the jury how you arrived at your opinion in regards to the signature, and what you used, and what you found therein?

page 1223 } A. I'm going to be testifying now and I want you ladies and gentlemen to look at the exhibit that is hinged in the center. Put the other one underneath and confine your attention to the exhibit that is hinged in the center. First, I'm going to explain just what this is so you will know where each portion of this exhibit came from, as it applies to the Government's evidence.

As you look at this document, under the word, question, you see the name "J. Pater." This is the signature that appeared on the bottom of the letter which has been marked Government's 5G for identification. Below the words "John Patler," are six signatures, the first of these signatures, "John Patler," was taken off Government's Exhibit 14-A-7 for identification—I am sorry 14-A-1 for identification. This is the handwriting or the signature of John Patler on his palm print card, the right-hand side of the card. The signature directly below that was the signature of John Patler. On the left palm print side of that same exhibit, Government's 14-A-1, the third signature down was the signature, "John Patler," as it appeared on the fingerprint card, Government's 14-A-2 for identification. The fourth signature down is the same "J. Pater" that appeared on a lined card which has been marked Government's
page 1224 } Exhibit 14-C-6 for identification. The fifth signature is "J. Pater" as it appeared on the letter, Commonwealth's Exhibit No. 14C-4 for identification. The last signature down is the signature that appeared on a small card which has been marked Commonwealth's No. 14-C-1 for identification.

This exhibit was prepared in the follow manner: I took the various documents that I have identified here and photographed these documents with the same camera, set at the point to take the most sufficient use of the document, all of the documents were photographed with the camera at that same setting so that there would be no difference in the image, the size as it appeared on the negative. After these negatives were developed, I printed a print from each of the

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negatives of each of these signatures. I then cut out the signature portion from the print that I made so that I could arrange them in an area to make the viewing easily and to make the viewing easier for you ladies and gentlemen to follow my testimony. I then photographed that chart or that arrangement of signatures and make two exposures, one of the top part of your chart as you look at it, the second of the three signatures on the lower part. I then hinged these things together so that the signatures on this finished chart now would be all enlarged over their original page 1225 } size, of course, but all enlarged in exactly the same degree.

Now, I am going to go through for you the method that I would normally have gone through in making a comparison of this type, and show you the things that are important for me for handwriting comparison of this type.

First, I took the question document, this is Government's 5G for identification, the letter, and I examined the signature that appeared on that letter. I took into consideration the size, the slant, the writing quality, the ability of the writer, the shading that the writer used in preparing his letter, the method in forming each individual letter, the method of connecting the various letters, one to the other, and after I looked at this, I then put this aside and took all of the known writings. These are the six signatures that appeared below the word "known John Patler." I examined each of these and all six of them as a group and I took into consideration on these signatures the same things that I had examined on the first, in other words, the size, the slant, the indention to the base line, the impression and the shading of the writer, the method of connecting individual letters, and the method of forming the individual letters, the method of starting the writing, the terminal stroke, the beginning and ending points of the lines, the proportions page 1226 } within the letter and within the letters as opposed one to the other.

I then took the questioned signature and brought it back into my view and looked at it and examined it, comparing it to the six known signatures. I'm going to go through for you the same type of an examination or the same type of reasoning which I would have gone through, or which I did go through in making the comparison. The first thing that I checked was the size of the signature, this is the size as to the length and to the height of the various letters within the

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signature. I find agreement in the overall length of the signatures, eight-sixteenth of an inch on the original document. Of course, they are enlarged on the chart that you are looking on at the present time. I found the known signatures of John Patler, this is nine-sixteenth of an inch and eight-sixteenth of an inch, which is similar to the questioned signature that I had, so that there was agreement in the over-all length. Now this eight-sixteenth or nine-sixteenth of an inch deals only with the last name, I did not take the first name because several of these were John Patler's signature and several of those were not the valid comparison to compare the names as opposed to the initial name, but page 1227 } where that was the initial name, there was agreement throughout, but where there was just a single word "Patler" in the other three signatures, there was agreement.

There was also agreement in the height in the letter, in illustration, the "T" in the signature, five-sixteenth of an inch, in the known signature "Patler." They vary from four-sixteenth and six-sixteenth of an inch, the five-sixteenth of an inch was in normal height for this particular letter. I did the same thing for the letter "J" and the "E" and the various small letters throughout and I found agreement in the height and in the over-all length of the signature.

I checked the slant of the writing, I found that the various parts of the signature slanted in different amounts. To illustrate, the "P" is slanted thirty degrees to the right, in question, the "P" twenty degrees, and the "R" was straight up and down, zero degrees. No slant at all in the "R." This same thing was checked in the various known signatures here under the word "John Patler," and I found similar agreement throughout. Now there were some that there were variations in, but a certain amount of variation is normal and is to be expected in anyone's signature at any time. No two signatures would be exactly the same and page 1228 } that is illustrated by just looking at the six known signatures of John Patler, none of them are exactly the same, even if you don't take into consideration the dropping of the letter in several of the signatures.

I also checked the speed of the writing. Now, it is possible to tell the speed of the writing by looking at the writing and as to the line quality and the shading that the writer uses, the line quality would be the smoothness with which the line appears and the shading would be the varying of the heavy

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and light line. If a person writes, as an illustration, very rapidly, his line does not show quivering or saw-tooth appearance under magnification, and if he writes rapidly, his writing normally has some shading, lightness or a darkness in parts as to up strokes or down. Now, I found that appearing in the question writing, I found this appearing in the known.

At this time, I might point out one difference in the questioned signature and in the known that you are looking at and that difference is this, the photograph of the signature "J. Pater," as it appears under the word "question," was made for a photocopy. The six signatures under the word "known" were photographs of original documents. Now, this makes a slight difference in the line quality and page 1229 } to illustrate that best, if you will look at the typing under the word "question," you will see that the typing is a little bit ragged in its appearance as far as the line quality goes, and that same thing goes down to the signature. That is because the photocopy process does not have the quality in minute detail that the original copies would have. Whenever you photocopy something, you lose a little bit of detail in a slight breaking of the line so that it accounts for the slight difference in line quality, but you see, between the word "question" and "known" an illustration of why that is true, if you will look at the typing again under "question," you will see that it isn't sharp and it shows the same jagged or rough line quality and the typing or the printing under the word "known" does not show this. The lines are smooth and firm and do not show this slight break-up, but in any event, you can see the speed in the word in question. You can see it in the very delicate line on the back part of the "J" where the writer is coming down below the base line and you can see it in the feathering out at the end of the "P" crossing. In other words, the writer didn't go over to the right and stop very slowly and deliberately. The pen was flying across the paper and it feathered out and left the paper just barely making any deposits of page 1230 } ink on the back of the paper fibers, that is the fiber of the line, so there is a rapid signature as far as the speed went and the question in the same signatures in the known.

There is also shading similarity between "question" and "known," if you will look at the "J" under the word "question," you will find that the writer had a very heavy down stroke in his "J," and a very light up stroke with his pen,

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making a much lighter contact with the paper. Now, if you will look down through the known writings of John Patler, you will find the same situation. It is quite easy to see it in the third signature down. It is very prominent in the fourth signature down, in the fifth signature down, the last signature was made with a pencil and the shading is not quite as prominent in that penciled signature, the way it is on the one marked seven on the chart. The same situation exists in the "T" where the writer was going up to form the back side of the "T," he had a very light pressure and when he was coming down, he had a very heavy pressure in his "T" in "Pater" on the question document. That same situation manifests itself in some of the known writings.

If you will look down at the signature marked five under the known, you will see that very light upstroke and very heavy down and it shows to a lesser degree in page 1231 } the other signatures. It is also prominent in 2 and then a rather heavy down stroke on the ending "R." This completes his habit of pressure, something he probably is not thinking of, I am certain, when he writes, this is how hard he is pressing his writing instrument on his paper and he continues with that heavy ending stroke on his "R." This shows in the question and this shows in all of the known signatures, I then connected the indention to the base line and I found a rather unusual situation, the questioned signature was not signed on the line and four of the known signatures were, two were not, so you will have to draw an imaginary line in your mind under the signature "J. Pater," as it appears on the question document and you will find that the "J," the top part and the bottom part, the two loops meet about an eighth of an inch on your charts above what would be the base line, that being the imaginary line that would go under the "ater," the lower case or smaller letters as we call them, so that the "J" is actually written up in the air, up over the base line. Now, the "P," in other words, drops down about an eighth of an inch on your charts, below the base line so that one capital letter is written up in the air, high above the base line and one below. Then the "ater" follows on through on a line. If you will look down under the known writing, even where John Patler had a line to guide, his "J" is consistently joined with the top and the bottom loop up above the normal base line of the writing. The "P" in relation to those lower case or small letters, drops down below the base or the bottom

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of those lower case letters, so that here you have contradiction within a signature, you have one letter high above the base line, one dropping below the base line and the balance of the signature pretty much then on the even plane. You find that in the question, you find that in the known, so there is agreement in that respect, also.

The next thing would have been the connections, the connections between various letters. The questioned signature "J. Pater" is joined by a garland-type joining. To best illustrate this, I would let you think of a decoration at a party, maybe that is strung from one point to another and it has a nice curve on the bottom. Now, this is typical of one school of writing, these would be persons who normally make their ovals going from the right and closing down to the left and it gives them a nice rounded bottom on their ovals, the opposite of that would be a person who makes his ovals up on the left side and down, and this person would have sharp connections between his letters.

page 1233 } I wonder if I could have a blackboard, Your Honor, I might illustrate some of these points and they might be a little clearer.

The Court: Yes, sir.

The Witness: What I meant by this garland-type connection is, I am striking out the ovals and forming the ovals we would have learned in our penmanship in that manner, instead of this, you get the nice rounded connections between the letters as opposed to a harsh, pointed, or sharp connection, when we have what is known as the arcade style of writing, so this is a system. This, again, is something that a writer does, apparently and probably has never given any thought or attention to it at all.

I next checked the skill. John Patler is a good writer, although being fast he probably gives little attention to detail and has obvious legibility and quality in his known signature and questioned signature and in all of the known signatures, so that there was agreement on this point in the amount of skill or ability displayed by a writer.

Another thing that I gave attention to was the terminal stroke. This was the beginning strokes and the ending strokes of the various lines. If I place my chalk or my writing instrument on the paper and my chalk on
page 1234 } this board and write a deliberate line as to a deliberate point and stop, I have a very blunt, de-

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finite beginning stroke and a very definite ending stroke, but if I take my chalk and swiftly dash a line across the surface, I have magnified these two things now, they begin and end like this on a definite stroke and a beginning like this and an ending like this on the swift stroke (indicating), because here my writing instrument was placed on the document and started from a standing point. In this situation, my writing instrument was flying through the air and just began to make very slight contact to very heavy contact in the middle and then tapered off, so in examining the questioned writing of John Patler—or the questioned signature, I am sorry, on the Government 5G exhibit, I have found that John Patler—or that the writer, I am sorry, placed his pen down stronger at the beginning of his strokes and tapered off at the ending of his strokes as a general thing, but with one difference. That was in the ending “R.” Now, if you will look at the “T” strokes, first you will see this very definite strong beginning to the “T” stroke and it feathered out to a very tiny, thin line on the end of the “T” stroke. You can find it at the beginning of the “J” but if you go to the ending “R”

you find a different situation, you find that
page 1235 } when the question letter was ended, it was ended
with a very definite, firm, final stroke that stopped abruptly in one point. If you examine the known writings of John Patler, you will find the same situation existing, a very definite, firm start on his “P” crossings that feather out so that the writing instrument rises off the paper with a very swift speed and a flourishing, giving a very tapered line, but when he gets to the ending “R” he finalizes his signature by very abruptly ending his “R” on a very definite note, so that you have a very blunt ending here (indicating). I am magnifying this, of course, so you can see what I am pointing out, so there was a contradiction within the questioned signature of broad beginnings and the feathered endings between the “P” stroke and the “R,” but that same contradiction or that same situation was exactly repeated in all of the known signatures of John Patler, so that again we had a similarity or sameness between the question and the known.

I checked the proportions between the capital “P,” the “A,” the “T,” the “E,” and the “R.” We found out or discovered that they were not as they should be, that the capital “P,” as an illustration, in some instances, was placed down so that it was not as tall as the “T” and the lower case “A” and the “E” and the “R” were in most instances at least

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page 1236 } half as high as the letter "P." Normally, they should have been about a third to party percent as tall, they shouldn't have been this high so that he put greater emphasis on the "A," "E," and "R" in his signature, and the question and his known writings, in that same situation, appeared in the questioned writing, so that there was sameness there. I then examined his signature, "John Pater," on the question material and compared it letter by letter with the "J. Pater" or "J. Patler" appearing in the known writing and these are the type of things that I took into consideration when making that comparison.

First, I am going to attempt to draw this as we go along. Now this isn't an exact reproduction of any signature on this chart, it is only put here to guide you as to certain points, so if you will bear with me just a moment.

Now, in examining these various letters, one at a time, making a comparison, I found the following: The letter "J" was made with roughly even length between the top and the bottom so that there was generally about eight-sixteenths over-all length to the "J" and about four-sixteenths to the top and the bottom of the question and there was some variation with this on the known writings, but generally all very close. They are also reasonably close, again,

page 1237 } some variations in each of the "J" in the known and in this, but reasonable agreement. I found this very heavy base stem of the "J" and a very faint back stroke with very light pressure that I spoke of. I found this "J" place up off of the base line, I found the top and the bottom of the "J" tied together right at one point as opposed to a "J" that would be like so (indicating) or maybe one that would come down and leave a tying together of top and bottom portions, like this (indicating), so he ties his "J's" together, normally in one spot with two top and bottom loops and they are the letters placed above the base line. This showed in the questioned signature, it showed throughout the known signatures of John Patler.

Three of the signatures under the known, numbers 1, 2, and 3, had the words "John," J-o-h-n, the 5, 6, and 7, on the bottom half of your exhibit have the "J. Patler" written on the "J. Pater" written as one continuous line and those, I found, the height line going up and the connection between the "J" and the "P," and if you will look at your question chart, you will find that very faint line that goes up to the beginning stroke of the "P" located in this area (indicating), the "P"

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then going down below the base line, by base line, I mean the imaginary line that would come along under page 1238 } these lower case or small letters so that this letter that I mentioned before up off the base line, this one placed below the base line (indicating), both are in this position in question and in all of the known signatures. I found a number of variations in the "P." The first three signatures under the known, there was no connection here (indicating), the signature was not thrown together quite as swiftly as the three down on the bottom where Mr. Patler used a single initial, plus his last name and dropped the small letters of the first name, so in these bottom ones they were written the same as the question signature. I found this first "P" too narrow in width and when the writer came down, instead of tying his "P" back into his down stroke or his base, or back, or start of it, he curved away very lightly and joined the "P" to the "A" that followed.

He did that in the three signatures, 5, 6, and 7 in exactly the same fashion as the connecting stroke appeared on the question signature.

The "A" followed his contradiction of the normally taught "A," incidentally, I might say, that there is no "P" taught in any of our handwriting systems currently that match the "P" made in this particular fashion. The "A" that follows, again, is not an "A" that is taught in any of page 1239 } our systems. The normal "A" is this type of an "A" (indicating). It is not an "A" made in this fashion, traced down the back or like this (indicating). This is not a normal style, it is a style that is stylized by the person writing very fast, usually unconsciously, still legible, but definitely different than any style that would be taught, individually, with a small group of writers.

Each of these unusual things might be found by themselves in the writing of some other person, but when we talk of all these individual and unusual things appearing in one set of circumstances, the probability of finding them to be the same is very strong.

The next lower case letter is the "T." Again, this is not a taught "T." The normal "T" that is taught is a "T" with the back or the stem retraced most of its distance from the top to the bottom, a very small cross, evenly balanced on both sides. This "T" is not taught in any system, it is another stylized, unusual, personal characteristic of the writer, far too wide and the "T" crossing far too long and unbalanced

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over to the right. This appears in the question signature, it appeared in the known signatures of John Patler, appearing in the lower part of the chart. Now, there's agreement on this letter, also.

page 1240 } I mentioned before the connecting stroke is a very round and nice evenly spacing of the letters in the signature, the "E" is a fairly normally "E," the only thing unusual, it is a little too tall as I mentioned before when I spoke of the proportions with the letters. It should be about this tall (indicating) in comparison to the "T." It is merely half as tall and it is a little too narrow and in some instances in his known writing, he actually retraces the "E" and it has a "I" appearance, but in most instances it is a little too narrow.

The ending "R" again, this "R" is not taught in any handwriting system being taught in this country. There are about four or five slight variations of the "R" taught, but in all of them there's some arrangement of shoulder with the exception of this "R" on the bottom which is not of this style (indicating) but there should be some arrangement of shoulders, either one or two at the top, but this is not a normal letter style. Then the writer finished with a very definite stroke down at the base line in most instances with all of the normal signatures the same as the signatures under the word "question" appearing on the question document so that his had agreement pretty much all the way through.

In all of the letters, I found no feature in the page 1241 } question signature that I did not find present in the known signatures, in fact, I found excellent agreement throughout and it would be my opinion that John Patler who wrote the signatures 1, 2, 3, 4, 5, 6, and 7, appearing in the lower part of your chart, wrote the question signature appearing in the top part of your chart, as a freely written naturally, normally written signature with no attempt to disguise.

By Mr. Hassan:

Q. Now do you want to go back to the stand and we will go on to—

A. I might stay here for the other chart, Your Honor, I think there might be some points that need clarification.

Q. Will you tell us how you arrived at your opinion that the word "CONFIDENTIAL" that appears on Commonwealth's Exhibit 5G was done by John Patler?

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A. Now if you ladies and gentlemen will look at this other chart that you have in front of you, the one that does not hinge in the center, this has the word "CONFIDENTIAL" appearing in the question. This word "CONFIDENTIAL" was taken off the top of Commonwealth's Exhibit 5G, the lower part of your chart appearing under the words "Known John Patler" are three sets of hand printing. The first, the largest of the three, the second or medium size, page 1242 } and the third, the smallest, the first, or largest group of printed material was taken off Commonwealth's Exhibit 14C-2 for identification, the center section was taken off of Commonwealth's 14C-3 for identification, and the smaller printing on the bottom was taken off of Commonwealth's 14C-5 for identification. There's obviously disagreement in size in the question material and these three known portions that you have on these charts.

Now, we photographed these things in exactly the same size ratio as made by printers in their markup, we photographed that markup and made this print in exactly the same size ratio as these documents appeared so that the word "CONFIDENTIAL" that you see, ladies and gentlemen, here (indicating) was this much larger than these other documents on Government's Exhibit 5G and that these other three sections of printed material were all different in size as they appeared here, so I did not attempt to make all of these things the same size, I made them in exactly the same size as I had them to work with. I'm not going to go into detail as to this part of the preparation of this because it would be the similar steps as to what I went through on the other exhibit.

The word "CONFIDENTIAL" under the word "question" was a very swiftly, rapidly printed word and page 1243 } it was printed by a person who obviously prints a great deal so it was all printed in upper case or capital letters, and the known printing of John Patler that I had for comparison was all printed in capital letters and it was all rapidly printed by a person who has printed quite a bit, obviously a very rapid, fast, good printer, a person who might print quite a bit in his normal activities. I found perfect agreement in all of the letters of the word "CONFIDENTIAL."

As you look at your chart, you will see small green felt pen marks under certain of the known portions of the known writings. These were under the letters that appeared in the

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word "CONFIDENTIAL," especially where I could find two of them appearing in the sequence as they appeared in the word "CONFIDENTIAL" itself and I underlined these because I thought these were especially important and especially close in style and in formation with the question word. If you will look at the word, the letters "CO," the very first line of the known John Patler, you will see a "C" formed in the same general fashion as the upper case "C," a very definite beginning with a slight hook, a very tiny little bit of feathering as the pen touched the paper, it is apparent in the question and it is apparent on that word "C" in "copy,"

the proportions are very similar. At the bottom page 1244 } of the "C," is the feathering out or the tapering as I have drawn some of these feathered lines under the written description before.

The "O" in the question word is slightly taller than it was wide and slightly flat on the one side, and in most instances, the finish of the letter was a little higher than the beginning, but the meeting of the beginning and ending stroke was always in the upper left as you look at the "O," at about what would be 11:00 o'clock on a watch or a clock, so that there was agreement in the shape, slightly out-of-balance look of the "O," the height, the width, the ratio, the beginning and ending, and the slight over drawing of the finished stroke, the "N" is a multi or is a single stroke "N" and in most instances, it is a little higher on the finish than it is at the peak of the size, between the front and the back, the beginning and the ending stroke. You will find that "N" duplicated in the end of newspapers or on the very first letter of the line of your signatures.

The "F" in "CONFIDENTIAL" you will find duplicated in the word "fort," it is the fourth line down, you will also find it fourth down in "satisfied," a lot of these letters that I am pointing out to you are going to be found in several places here, I am only showing you in the top section, you can look at these a little closer, if you will.

page 1245 } The "I," in many instances, was joined to the other letters, but many times it wasn't. The word "copies" again in the upper right-hand corner of the known specimen the "I" was not connected in a very straight stroke.

There isn't a great deal identifying about a "I," the "D" in "CONFIDENTIAL" is duplicated in the word side." If you will look right straight down the left side of your exhibit, the word "side" right on the left margin, you will see

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a "D" made with a slight overhang at the top and the bottom, there were two "D's" appearing in the known writing. Some were slightly different, one was made in a single stroke, this is different than the word made in question, however, this "D" in question did, also, appear normally in the known writing of Patler, so there is agreement in this letter also.

The "E" in "CONFIDENTIAL" was interesting in that the two letters were made together and that they were made in this fashion (indicating), one, two strokes in the "E," and then the top of the "E" and the end running together. Now, John Patler, in his normal writing runs many of his letters together, this is speed, this is in evidence in this man when this man is printing, when he is not giving thought, necessarily to the formation of his letters but is flying across

the paper, so his printing is turning into sort
page 1246 } of a semiwritten style because he begins to run

his various printed letters together, so here you have the letter "E" with the curved back stroke and a rounded bottom in the question material. You see that appearing. Look at the word "sent," s-e-n-t, on the second line, you see the same back stroke, a second short stroke in the center and then a lighter stroke across the top of the "E" and going down into the "N." Now, I underlined a number of these with this green mark throughout the known writings of John Patler so that you could see because he does this normally and habitually in a lot of his writings.

The "TI" was made again, just two strokes, the back stroke and the down stroke with the "T," and the crossing in the "I" made in one stroke in the word "CONFIDENTIAL," this same thing appears when a lot of letters follow the "T," if you will notice the "TO" on the very first line under "known John Patler," and then if you will look down further in the word "satisfied" or the word "Martin" appearing in the center section, you will find that he follows the "I" whenever it follows the "T" or many times when it follows the "T" is connected in this fashion. This is a highly individual situation here in question that appears in the known and this is a highly individual formation of these two letters. It appears

in the question and it appears in the known. The
page 1247 } "AL" then will also connect the "A" made front
and back with a rounded top and then crossing
on the "A" and the "L" connected to it. You will find that in the word "CONFIDENTIAL," you will find that throughout the known writings of John Patler. If you will look at the

James T. Miller

word "Ralph," as an illustration in the very first group, you will find the "AL" connected. You will find the rounded beginning down stroke on the "A" and the rounded top, the pen lifts the crossing and the "L." A number of these things are not taught in a known block-letter style printing as is taught in school. This "N" with four directions in the stroke is not taught, when the "N" is taught, it is usually taught without this and we go into this one stroke style as we speed up and take short cuts and develop our own individual method of writing these things, as it is easiest and fastest for us. This is not a taught style. This "A" again with this beginning strike on front and back with the start is not a taught style, this, again, is an innovation by the writer. The "L" with its rounded bottom is *certainly* not a taught style. This, again, would be an *innovation* or peculiar characteristic to John Patler. It is also found in the question writing and then the tying together of these individual letters throughout the word. These would be an *individual* personal page 1248 } writing characteristic of John Patler that found themselves or were also found in the word "CONFIDENTIAL."

So after examining all of the known printing of John Patler, making a comparison between that and the question writing, it was my opinion that John Patler printed the word "CONFIDENTIAL," that he printed it rapidly, and with no apparent thought for disguise when he printed it.

Q. Thank you very much, Mr. Miller.

CROSS-EXAMINATION

By Mr. Harrigan:

Q. Mr. Miller, are you employed for yourself or are you employed by the Metropolitan Police Department?

A. I am employed by the Metropolitan Police Department and I also occasionally do some cases on my own.

Q. Do you have your own business, I notice you have got your own letterhead on your letter.

A. I sometimes make examinations and write reports on my own.

Q. Do you have a regular weekly salary from the D. C. Police?

A. Yes, I do.

Q. Were you working from a photostat here?

A. On the question signature I was, that's correct.

James T. Miller

Q. I understand that you don't ordinarily like
page 1249 } to do that, is that right, to work with photo-
stats, you would rather work from an original?

A. That's correct.

Q. Why is that?

A. Because an original is better than a photocopy in most instances or in all instances.

Q. Better in what way?

A. It is better in that it is the original document and it is clearer, it is sharper, and anytime you copy a document you have a slight loss in quality.

Q. Anytime after you copy a copy, you have an even further loss, is that correct?

A. That would be correct.

Q. Now the document that you are working from, how many times had that been copies?

A. When, which time I worked on it, which document, let's put it that way?

Q. The Court's document.

Mr. Hassan: 5G.

By Mr. Harrigan:

Q. 5G, how many times had that been photostated?

A. I don't know, it appears maybe once, I don't know.

Q. Is there any way to tell by looking at it
page 1250 } or examining it, or any other way?

A. I don't sir, I don't know that there would be.

Q. Now, how difficult would it be to put a signature on the bottom of a document and photostat it?

A. To put it on how, sir?

Q. To put it on anyway like you did, pull out a signature and put it on the bottom of a document and photostat it?

A. You mean if you had an unsigned document, could you take a signature from some other area and place it on the bottom and photostat it, is this what you are asking?

Q. Would it come out?

A. Yes, you could do this.

Q. Could you do it?

A. I could, sir.

Q. Could you tell how old the signature was in that photostat when it was signed?

A. No, sir, I couldn't.

James T. Miller

Q. Could you tell how old the exhibit, itself, was?

A. You mean the photocopy, itself?

Q. That's right.

A. No, sir, I couldn't, I could tell that it was page 1251 } not sparkling new out of the photocopy machine, it had been folded a couple of times and evidently carried in a position of being folded once, twice, three times, because it accumulated some dirt on the outside from being carried in this position, but I couldn't tell you how old the actual photocopy, itself, is.

Q. It is obvious it isn't new?

A. That's correct, sir.

Q. How about the typing on that particular copy, did you compare anything at all on that, sir, or look at it?

A. No, sir, I didn't.

Q. You couldn't testify that 5G there is identical with the original, could you?

A. I couldn't because I don't have the original to examine, sir, I can't answer your question.

Q. In other words, you would have to have the original in order to make that determination?

A. That would be correct, sir.

Q. That's all.

The Court: May the witness be excused?

Mr. Hassan: He may.

The Court: Thank you, Mr. Miller, you are excused.

(Witness excused.)

Mr. Hassan: May we gather up the exhibits page 1252 } from the jury?

The Court: We have copies which are marked in evidence that you may examine at the proper time.

Mr. Hassan: If Your Honor please, may we have a recess and have this courtroom aired out? Mrs. Lane says she is feeling ill.

The Court: All right, will the jury retire, please, Court will recess for ten minutes.

(Whereupon, a short recess was taken.)

The Court: Are you all ready for the jury?

Mr. Harrigan: I would renew my motion to strike Mr. Miller's testimony.

Robert E. Roof

The Court; The motion is denied.

Mr. Harrigan: Based on the grounds that we don't know that the writing he examined was an exact duplicate of the original and the other grounds previously stated, note my exception.

Mr. Hassan: If Your Honor please, I am going to reoffer Commonwealth's Exhibit 5G in evidence.

The Court: Mr. Hassan, has the Commonwealth any evidence as to the time in which it was written?

Mr. Hassan: Yes, Your Honor, I believe that we will show by a later witness who will relate the time by a page 1253 } radio speech recording referred to in the letter.

The Court: I will refuse it until that is done and I have an opportunity to consider what lapse of time is involved and what bearing that might have on the relevancy of it, then also, there's the best evidence problem that I mentioned to you as well.

Mr. Hassan: All right, we have testimony on that also, Your Honor, but I did want the record to show that I again did offer it at this point.

I would like to have Robert E. Roof.

Whereupon, ROBERT E. ROOF, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Would you state your name, sir, and your occupation?

A. Robert E. Roof, Arlington County Police Department.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when you responded to the six thousand block of Wilson Boulevard?

A. Yes, sir, there was.

page 1254 } Q. When you arrived there, what did you see?

A. When I arrived there, there was a large group of people, sir, we were on the outside and they asked us to control the traffic.

Q. What did you see when you arrived?

A. What did I see, sir?

Q. Yes, sir.

A. There was a male that had been shot and was lying in

Robert E. Roof

the driveway of the parking area of the shopping center, sir.

Q. What did you do?

A. We worked with the crowd to hold the people back from the scene, sir, and then I left there and my partner was left there and then I went to the roof of the shopping center, sir.

Q. How did you get on the roof?

A. I went to the Seven Eleven store, sir, there in the shopping center and asked if they had a ladder, which they didn't, and there was a man in the shopping center there who said he had a ladder that we could use. I put the ladder up beside the Seven Eleven store that went onto the roof, sir.

Q. When you got on the roof, sir, will you describe what you saw?

page 1255 } A. Yes, sir, the stores there were divided with these little—they're raised, I guess they are partitions between the buildings there, and there was water on the roof. It was a gravel roof and there was nobody up there.

Q. Did you make a search of the roof?

A. Yes, sir, I went down to approximately above 6029 Wilson Boulevard and they have these on the front of the buildings, there is these things stating which building is which there and I was just down over the roof of those.

Q. Did you examine the entire roof?

A. No, sir, I went down about 6029 and I found the shell casing laying on one of the tops of these little signs there.

Q. Will you describe the quantity of water that you saw on the roof?

A. Some of it, sir, was—I didn't get in the water myself, some looked like the roof was very wet and in other places it looked like the water standing was over the shoe tops, I didn't measure it, sir.

Q. Now, from the time you arrived on the roof until the car was removed, and the body was removed, did anyone else go on that roof?

A. There was several detectives that came up
page 1256 } there, sir, and there was an identification officer up there, too, Officer Taylor.

Q. What did Officer Taylor do that you saw while you were there?

A. He took pictures from up there, I believe, sir, and he also checked the various tops of these signs up there for fingerprints and they also took footprints.

Robert E. Roof

Q. Did there come a time when you picked up the shell that you found?

A. Yes, sir, there was.

Q. What did you do with that?

A. I kept it on my person until I turned it into the property, sir.

Q. Did you mark it for identification in any way?

A. Yes, sir, I did.

Q. I'd like to have property No. 23871.

I'd like to have you examine that, sir, and tell me if you know what it is, please answer yes or no.

A. To which?

Q. Answer yes or no.

A. If I know what this is?

Q. Yes.

A. It is a shell case.

psge 1257 } Q. Just answer yes or no.

A. Yes, sir.

Q. I'd like to have that marked for identification as Commonwealth's Exhibit No. 16.

Will you please tell me how you marked it and examine it and see if your mark is on there.

A. Yes, sir, I marked it with "R" right here and here it is (indicating).

Q. You turned that into the property room, how did you turn it in?

A. On a regular police property form.

Q. I'd like to offer this as Commonwealth's Exhibit No. 16.

The Court: Is there an objection?

Mr. Harrigan: No, Your Honor.

The Court: It will be received and marked as Commonwealth's Exhibit 16.

(The object previously referred to was marked Commonwealth's Exhibit No. 16 for identification.)

By Mr. Hassan:

Q. Now, did there come a time when you got down from that roof?

page 1258 } A. Yes, sir.

Q. Will you tell the Court and jury whether there was anything unusual about your appearance when you got down?

Robert E. Roof

A. Yes, sir, I had tar on the bottom of my feet—not my feet, on the bottom of my shoes when I got down, sir.

Q. Can you describe the quantity?

A. It was just as if you stepped in a tar and like it was used on some of the roofs before they put the gravel, I stepped in it on the top of the roof, sir.

Q. I have no further questions of this witness.

CROSS-EXAMINATION

By Mr. Harrigan:

Q. What time did you arrive at Wilson Boulevard Shopping Center?

A. I can't tell you exactly, Mr. Harrigan, it was approximately, I would say, somewhere around 12:30, quarter after or 12:30.

Q. Did you say 12:30 or quarter after twelve?

A. Approximately in there somewhere, yes, sir.

Q. When you got there, you said there was a big crowd around?

A. Yes, sir, there was.

Q. What were you driving?

page 1259 } A. A patrol wagon, sir.

Q. Anybody with you?

A. Yes, sir, there was.

Q. Who?

A. Police Officer Short.

Q. Who was there at the scene, detectives or other officers when you arrived?

A. Sergeant Kadel was there, sir.

Q. All right, who else?

A. I don't recall seeing any others right there at that time, sir.

Q. Were there any uniformed officers there that you know of?

A. Not that I can identify at this time, no, sir.

Q. Now, you were up on the roof, looking down at the crowd, also, weren't you?

A. Yes, sir.

Q. So you would have been in a perfect position to see officers if they had been there?

A. You said when I arrived there, sir.

Q. All right, how soon after you arrived there did you go up on the roof?

Robert E. Roof

A. Maybe five or ten minutes, sir.
page 1260 } Q. So that would put you up on the roof
somewhere between twenty and twenty-five
after twelve, or even later than that?

A. Exactly, sir, I couldn't say, I am just approximating.

Q. All right, now you said you went up by the way of the
Seven Eleven Store?

A. Yes, sir, by the side.

Q. Toward the back?

A. Well, the Seven Eleven front is on a side street there
and I went on the side of that, sir.

Q. Which would be looking from Wilson Boulevard, almost
in back of the building, it would be the back of the building,
wouldn't it?

A. No, sir, it would be the side to the Seven Eleven, but to
the other stores there, it would be to their rear.

Q. All right, now at that location, is there a brick wall?

A. I believe it is, sir.

Q. How far is that brick wall from the roof level?

A. I don't know, sir.

Q. Can you stand on the wall and look up on the roof?

A. I don't know, sir, I didn't get on the wall at all, sir.

Q. Now, you went up on the roof and did you
page 1261 } go over the whole roof?

A. No, sir, I didn't, I got up on the roof and
I came around to approximately where the car was down be-
low and then after I found the casing, that is where I stepped
in.

Q. Now, on the part of the roof that you went over, would
that be about two or three, or four roofs that you covered in
getting to the place where you found this casing?

A. I imagine it would be, sir, I didn't count.

Q. You were asked what was the condition of those roofs
that you covered with regard to wetness, what did you say,
how wet were they?

A. Some of them, sir, looked as if they were damp, there
was no standing water on them, other ones there looked as
if there were more than in the others. I did not measure the
water to see how deep it was.

Q. Would you say that on some of the roofs the water was
an inch or so deep?

A. I would imagine so, sir, I didn't measure it.

Q. You didn't see any roofs where water was four to six
inches deep, did you?

Robert E. Roof

A. It could have been, sir, as I said, I didn't measure it.

Q. As you went up to the roof you said you
page 1262 } found a shell casing?

A. Yes, sir.

Q. Was that on the back part of the roof or on the ledge?

A. It was right above, sir, the signs that tell you which
building is which, it was laying on top of one of those, sir.

Q. On top of one of the signs?

A. Yes, there about so wide (indicating).

Q. Which roof was that casing on?

Let me show you Commonwealth's Exhibit 7B, which has
been admitted in evidence, and it shows all the signs, see if
you can look at that and tell me the approximate locations
where you said you found this casing?

A. I believe the number of the building was 6029, sir, it
was right in between this Econo-Wash and this I believe (in-
dicating), it is a beauty salon, sir.

Q. Now you said you found this casing on a sign, did I
understand you correctly?

A. These signs, sir, are about so wide (indicating) and as
it shows here it was laying on top of that (indicating).

Q. Now which sign did you find it on?
page 1263 } A. 6029.

Q. Which would be which one?

A. Now the sign is in front of this ledge, 6029, I believe, is
that beauty salon and I believe that is the one I found it on
top of.

Q. The beauty salon sign?

A. Yes, sir, I believe it was right here (indicating).

Q. Now, those signs are all in front of the sign portion of
that roof or attached to the front of it, right?

A. This is attached, sir, to the partition and then it has a
ledge that jets out that covers the walk way.

Q. Just point to this picture so the jury can see it, which
side are you talking about?

A. It was right in here, sir, (indicating).

Q. This one (indicating)?

A. Yes, sir, right on the edge there, yes, sir.

The Court: Can you read the sign, Mr. Harrigan?

The Witness: I couldn't do it, Your Honor, but I believe
that was a beauty salon.

Robert E. Roof

By Mr. Harrigan:

Q. In any event, it is between the barber shop and the Econo-Wash, right, if my eyes are right.

A. Yes, sir.

page 1264 } Q. How many casings did you find?

A. I found one, sir.

Q. Now, did you get over on the front ledge of the building at all?

A. That is where I was standing part of the time, yes, sir.

Q. Who else was up there?

A. The identification officer Taylor and there were several detectives that came up that went over the building, sir, but I don't recall at this time who they were.

Q. You don't have any idea who they were?

A. One of them might have been Officer Burchette, but as to the other one, I do not know, sir.

Q. You said two detectives?

A. Yes, sir.

Q. Do you remember which two detectives?

A. That is what I just said, sir, one might have been Officer Burchette.

Q. Is Officer Burchette a detective?

A. Yes.

Q. Then he is not an officer?

A. No, sir.

Q. You don't recall the other ones?

page 1265 } A. No, sir, I do not.

Q. Any other uniformed people up there?

A. Not other than Officer Taylor, no, sir.

Q. Now besides finding the empty cartridge up there, did you find anything else?

A. Did I find anything else up there, sir, that I turned in for property?

Q. That's right.

A. No.

Q. Now, when did you mark that cartridge?

A. I marked it approximately 1:30, sir.

Q. Were you still on the roof then?

A. Yes, sir.

Q. Who did you give it to?

A. I turned it in to the property officer Wismer, I believe, sir.

Q. Now, did you notice any footprints on the roof?

A. Yes, sir, there were footprints up there.

Robert E. Roof

Q. How many of them?

A. I didn't count them, sir.

Q. I infer from that that there was more than one set of footprints up there?

A. More than one set, sir?

page 1266 } Q. I mean different kinds of footprints.

A. I didn't take notice to the different kinds, sir, I did see more than one footprint, it could have been different or it could have been the same, sir. I didn't look at it that close.

Q. Were there pictures taken of those prints?

A. I don't recall exactly what Officer Taylor did up there, sir. He could tell you that, sir.

Q. Now, did Officer Taylor dust any of the signs or any of the other parts of the building up there for fingerprints?

A. I believe he did, Mr. Harrigan.

Q. You are not sure?

A. No, sir, because I stayed by the evidence that I had found.

Q. So you didn't pick up this shell right away, until the picture was taken?

A. No, sir, I stayed right beside it.

Q. You said that you got some tar on your shoes, is that what you said?

A. Yes, sir, that is correct, I did.

Q. Did you say on both shoes or on one shoe?

A. On both shoes, sir. I had tar on my shoes
page 1267 } when I came down, sir.

Q. Did you have it on the side of your shoes?

A. Yes, sir, I did because I had to scrape it off on the pavement below.

Q. Did you scrape it off?

A. After I got down, yes, sir.

Q. Did it come right off?

A. Yes, sir.

Q. Did you notice your shoes before you went up on the roof?

A. I would have known whether they had tar on them or not, sir, and they didn't have tar on them when I went up on the roof.

Q. You're sure?

A. Yes, I am.

Q. I asked you did you notice them before you went up on the roof?

Robert E. Roof

A. I didn't check my shoes before I got on the ladder, no, sir.

Q. What kind of a parking lot do they have around that store?

A. Around the Seven Eleven, sir?

Q. Around the whole shopping center.

page 1268 } A. Well, they park—

Q. What is it made of, what kind of a parking lot is it?

A. I believe it is black-top, sir.

Q. You don't know how that shell got on that sign, do you, whether somebody threw it up from the ground, or if it was up there all along?

A. The only thing I can testify to, Mr. Harrigan, is I found the shell laying up there and I stayed with it.

Q. Now, you didn't know what kind of a cartridge you found when you found it, did you?

A. No, sir, I did not, because I am not an expert on firearms.

Q. You didn't know what caliber?

A. No, sir, I did not.

Q. Could you tell if that cartridge had been recently fired?

A. No, sir, because I am not an expert, as I just said and I couldn't tell whether it had or had not.

Q. After you came down off the roof, where did you go?

A. After I came down off the roof, sir, we went back on patrol, sir.

Q. You went back on patrol?

page 1269 } A. Yes, sir.

Q. Where did you go on patrol?

A. I was working on the south side, I don't recall whether or not we went back to the south side or whether we came on into the station, sir.

Q. You mean your regular tour was on the south side?

A. That's correct, sir.

Q. So you went back to your normal duties, what you're supposed to do, is that right?

The Court: He said he didn't know whether he went back there or came to the station.

By Mr. Harrigan:

Q. All right, now were you instructed to keep looking or

Robert E. Roof

cruise any area for a man of Mexican, Spanish descent, dark clothes, yellow socks?

A. When we left the shopping center, sir?

Q. Yes.

A. No, sir.

Q. What time did you finally get back to the station?

A. Just a few minutes before 3:00 I would imagine, sir, because that is the time that we end our normal tour of duty.

Q. Was the ID man back here by the time you got here?

A. I don't know, sir.

page 1270 } Q. How about the two detectives?

A. That I couldn't answer either, sir.

Q. You don't know that, either?

When you went in the station, which way did you go in?

A. Which way I went in, sir, I don't know, sir.

Q. When you got there, what did you do?

A. I went to the property office and turned in the evidence that I found, sir.

Q. Who was that?

A. I believe it was Officer Wismer.

Q. Did you sign that envelope, was that your signature on there (indicating)?

A. Yes, it is.

Q. It doesn't have the time on it that you turned it in, does it?

A. No, but I would say it went in about 3:00, sir.

Q. Now, at that time, did you notice whether John Patler was still upstairs in the detective bureau or not?

A. No, sir, I don't know where he was.

Q. When you say you turned it in to the front desk, is that the desk—

Mr. Hassan: If Your Honor please, he didn't
page 1271 } say the front desk, he said the property office.

The Court: That's correct.

Mr. Harrigan: Excuse me, the property office.

Would that be the property office here in the courthouse or over at the police station?

The Witness: It is the building next to the police station, sir.

Mr. Harrigan: That is all.

Mr. Hassan: Thank you very much.

The Court: May the officer be excused?

Charles Taylor

Mr. Hassan: He may be excused.

(Witness excused.)

Mr. Hassan: Officer Taylor.

The Clerk: He is on his way from home to here, Mr. Hassan.

The Court: Any other witness you can call?

Mr. Hassan: I told Officer Taylor to stand by here, that I was going to use him and I put a phone call in before I called Officer Roof to get him. Officer Taylor has all of the pictures of the scene and of the roof, I would prefer to present that to the jury before we move to the next phase of the case, I would like to get it done tonight.

page 1272 } Whereupon, CHARLES TAYLOR, was called
as a witness on behalf of the Commonwealth,
and having been previously duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Charles Taylor, Police Office, Arlington Police.

Q. What is your assigned duty in the police department?

A. Identification Bureau.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when you responded to the six thousand block of Wilson Boulevard in Arlington County?

A. Yes, sir, I did.

Q. What time was that, sir?

A. Approximately 10:00 a.m.

Q. You didn't bring the wrong file, did you?

A. Not entirely.

Q. Is that all the pictures you were expecting to testify to in this case?

A. Yes, it is, but I believe you have my other
page 1273 } sheets on it.

The Court: What sheets is that, sir.?

Charles Taylor

A. The data sheets for these particular films or pictures, the one dated the 25th.

Q. What time did you arrive there, if you know?

A. Approximately 12:30 in the afternoon.

Q. When you arrived there, what did you do, if anything?

A. I took photographs.

Q. Do you have those photographs with you?

A. Yes, sir.

Q. What is the first photograph that you took?

A. It would be a view of the body on the right side of the car, a 1958 Chevrolet.

Q. May I have that photograph, please?

A. You have the photograph.

Q. Have you got the photograph to which you are referring?

A. That's right.

Q. Do you have the number for the photograph, you have your Number one photograph?

A. This is Number one.

Q. This is Number 3577, Number 1, I'd like to offer this for identification as Commonwealth's Exhibit 17A.

page 1274 } (The photograph previously referred to was
marked Commonwealth's Exhibit No. 17A for
identification.)

While they are examining that, will you give me your photograph Number 2, Number 3, and Number 4, I would like to have these marked for identification, Number 2 is 17B, Number 3, 17C, Number 4, 17D, Number 5, 17E.

(The photographs previously referred to were marked Commonwealth's Exhibit No. 17B, No. 17C, No. 17D, and No. 17E for identification.)

Now, will you tell us again what that is a photograph of and where you were standing when you took it?

A. I was standing in front of 6029 Wilson Boulevard and that is the body laying between a 1958 Chevrolet, parked in front of that address.

Q. I'd like to offer that in evidence, Your Honor, as Commonwealth's 17A.

Charles Taylor

The Court: Is there an objection?

Mr. Harrigan: No, I'd like to ask one question on a couple of these.

page 1275 } I'd just like to know what time they were taken, that's all.

Mr. Hassan: No. 1, he said he started about 12:30.

Mr. Harrigan: All right.

The Court: 17A will be received in evidence.

(The photograph previously identified as Commonwealth's Exhibit No. 17A was received in evidence.)

Mr. Hassan: Will you tell us what 17B is?

The Witness: It would be a closer view of A, the same thing, the same automobile, same address.

Mr. Hassan: I'd like to offer that as 17B.

The Court: You can circulate that to the jury.

Is there an objection to 17B?

Mr. Harrigan: No, Your Honor.

The Court: It will be received.

(The photograph previously identified as Commonwealth's Exhibit No. 17B was received in evidence.)

Mr. Hassan: What is 17C, your Number 3?

The Witness: That would be a view of the '58 page 1276 } Chevrolet, 517705, Virginia tags, which also shows two bullet holes in the front windshield, the body in the foreground.

Mr. Hassan: I offer that, 17C.

The Court: Is there an objection to 17C?

Mr. Harrigan: A lot of these maybe I am missing something, but a lot of these seem to be just pictures of the body and sort of duplications.

Mr. Hassan: I show you your Number 4, sir, and ask you what that is?

The Witness: It will be a rear view of the '58 Chevrolet with the same tag number, Virginia 507705, it also shows the box of soap, paper, and articles of paper lying beside the body.

Mr. Hassan: I offer this as Commonwealth's D, Your Honor.

I show you your Number 5 and ask you what that is?

Charles Taylor

The Witness: That is a view of the body, taken from the right front side of the car.

Mr. Hassan: I offer that as Commonwealth's E, Your Honor.

The Court: Gentlemen, do you have objection to C, D, and E.

Mr. Harrigan: I object because it is mostly page 1277 { cumulative and about all they show is a picture of the body and we have half-a-dozen shots of that already, the license unnumber in front, the license number in back, and—

The Court: It seems to me that they have some probative value in that they are shot from different angles and there's nothing about them inflammatory or prejudicial to the defendant that I can see. Each tends to pick up some additional aspect of the evidence or portrayal of it.

Mr. Harrigan: We will withdraw that if that is the Court's viewpoint.

The Court: They will be received as C, D, and E.

(The photographs previously identified as Commonwealth's Exhibits No. 17C, No. 17D, and No. 17E, were received in evidence.)

By Mr. Hassan:

Q. I'd like to show you Commonwealth's Exhibit No. 17A and ask you, sir, if that is the picture you took that has been already admitted into evidence?

A. Yes, it is.

Q. What does that picture show?

A. It would be a view of the parking lot, looking page 1278 { ing east, showing a '58 Chevrolet and a covered body.

(The photographs previously referred to were marked Commonwealth's Exhibit No. 17F, No. 17G, No. 17H, No. 17I, No. 17J and No. 17K for identification.)

Q. I'd like to show you No. 17G, your Number 8, sir, and ask you what that is.

A. It would be a view of the parking lot, looking west, showing the same Chevrolet.

Q. I'd like to offer that in evidence, Your Honor, as Commonwealth's 17G.

Charles Taylor

Mr. Harrigan: We object to F as showing nothing.

Mr. Hassan: I ask you what that is a picture of and where you took it from.

The Witness: It would be a close view of the body, that is looking down on the body from the right side of the car, the right front.

Mr. Hassan: We are going to offer that as Commonwealth's 17F.

The Court: The objection to F is sustained.

Mr. Hassan: I'd like to take an exception to that, Your Honor. F shows some things that are not shown in G, principally, the time at which that picture was taken from the clock as it relates to the removal of the body from the scene which is very material in this case.

The Court: You don't mean clock, you mean watch.

Mr. Hassan: Watch, right.

page 1279 } The Court: With that explanation, I will reverse myself, I think it might have materiality in view of the cross-examination.

Mr. Harrigan: May I look at that?

What is that, ten after seven or 1:30?

Mr. Hassan: We have enlarged it, it is about seventeen minutes before one o'clock.

The testimony will be that the body was removed at 1:44 which is sixteen minutes before.

The Court: It will be admitted as 17F.

(The photograph previously identified as Commonwealth's Exhibit No. 17F was received in evidence.)

Now, G, 17G is the one that looks left down the parking lot, is there an objection to that.

Mr. Harrigan: No, we don't have an objection.

The Court: It will be received as 17G.

(The photograph previously identified as Commonwealth's Exhibit No. 17G was received in evidence.)

Mr. Hassan: I give you Number 9 and Number 10 as H and I, I show you Commonwealth's H, which is Number 9, and ask you what that is?

The Witness: This is a view of the parking lot taken from

Charles Taylor

the roof of 6029 Wilson Boulevard, which shows a 1958 Chevrolet with an open door, the white paper on the pavement to the left of the car door marks the blood spot where the head of the body was laying.

Mr. Hassan: I show you your number 10, sir, and ask you what that is?

The Witness: That is a view of the '58 Chevrolet taken from the roof above 6029, showing two bullet holes in the left side of the windshield.

The Court: Is there an objection to these two, H and I.

Mr. Harrigan: No, sir.

The Court: They will be received as 17H and 17I.

(The photographs previously identified as Commonwealth's Exhibits No. 17H and No. 17I were received in evidence.)

Mr. Hassan: I show you Commonwealth's Exhibit No. 17J, which is your photograph Number 13, and ask page 1281 } you, sir, what that is?

The Witness: It would be a view of the top front wall of 6029 Wilson Boulevard and there is a spent shell in the center of the picture.

Mr. Hassan: I would like to offer that in evidence, Your Honor.

The Court: Is there an objection?

Mr. Harrigan: No, Your Honor.

(The photograph previously identified as Commonwealth's Exhibit No. 17J was received in evidence.)

Mr. Hassan: I show you Commonwealth's Exhibit 12A, which is your photograph Number 12, which has previously been admitted into evidence by the testimony of Mr. Milroy, and ask you, sir, what that picture is?

The Witness: A view of the left rear of 6029 Wilson Boulevard, showing the water on the roof with the tar slate, fresh tar next to the rear wall.

Mr. Hassan: That has already been received, only for identification. I would like to offer it at this time, Your Honor, maybe they want to relook at it.

Now I show you Commonwealth's No. 17K, which is your picture Number 11, and ask you, sir, whether or page 1282 } not you can tell us what that picture is?

Charles Taylor

The Witness: It will be a view of a water-covered roof, 6029 Wilson Boulevard, and looking from the left rear of the store to the right front.

Mr. Hassan: I am going to offer that Your Honor.

The Court: Is there an objection to 17K, a picture of the roof showing the water?

Mr. Harrigan: I have an objection to that one and I might as well put them both together, Commonwealth No. 12A.

The Court: I thought 12A was admitted when Mr. Milroy testified.

Mr. Hassan: It doesn't show your initials on the back of it, Your Honor, I think it was offered and you wanted to wait for us to tie it up because he didn't know which particular roof it was.

The Court: You're right, go ahead, Mr. Harrigan.

Mr. Harrigan: The only objection that I have is that these two photographs seem to be an obvious attempt to single out certain areas of this roof and show water on it. I don't recall an objection to the photograph, if he took photographs of the rest of the roof, I'd like to see those, too.

Mr. Hassan: I am going to, you just give me page 1283 } a chance.

Mr. Harrigan: You always manage to put the wrong ones in first.

Mr. Hassan: I didn't take them, but I am giving them to you as numerically as I can.

Mr. Harrigan: I have one question, what time did you take them?

The Witness: I arrived on the scene shortly after 12:30 and I took them one right after another, from the time it took me to get up on the roof.

Mr. Harrigan: Did you go up on the roof to take pictures first?

The Witness: No, I started on the ground, took pictures on the ground, went around the rear of the building, and up on the roof.

Mr. Harrigan: What time did you leave?

The Witness: I have no idea, I would say I was there approximately an hour and a half, two hours at the most.

The Court: As to these two pictures of the roof showing water, the objection is overruled and they will be received as 12A and 17K, respectively.

Charles Taylor

(The photographs previously identified as
page 1284 } Commonwealth's Exhibits No. 12A and No. 17K
were received in evidence.)

Mr. Harrigan: Exception for the reasons stated.

By Mr. Hassan:

Q. Did there come a time when you took some additional photographs?

A. I did.

Q. When was that?

A. On the morning of the 26th, on Saturday morning.

Q. What time did you take those pictures?

A. I started at 10:00 o'clock.

Q. Do you have those pictures with you?

A. I do.

Q. I'd like to offer for identification photo 3577A2 Number 1, 2, and 3, as Commonwealth's 18A, B, and C, and I am offering these as 18D and E.

(The photographs previously referred to were marked Commonwealth's Exhibits No. 18A, No. 18B, No. 18C, No. 18D, and No. 18E for identification.)

Your Picture Number 1, sir, marked 18C, will you tell us, sir, what that is?

A. That would be a close view of the right
page 1285 } front corner of the roof of 6029 Wilson Boulevard, showing a drain cover, surrounded by fresh tar and also a beer can.

Q. I would like to offer that one Your Honor, and your Number 2, Commonwealth's 18B.

A. That would be the same as Number 1 showing the drain cover and the beer can covered with fresh tar, and it was taken from approximately eight feet away.

Q. I'd like to offer that as 18B, and Commonwealth's 18A, your Number 3, sir, what is that?

A. That would be a view of the roof of the shopping center, taken from the right rear of the east end of the building looking west.

Q. I offer that, Your Honor.

The Court: Is there an objection to 18A, B, and C?

Charles Taylor

Mr. Harrigan: I object.

Mr. Hassan: F, G, and H

The Court: Mr. Harrigan, do you want to state any grounds for your objection to 18A, B, and C?

Mr. Harrigan: I withdraw the objection.

The Court: They will be admitted.

(The photographs previously identified as page 1286 } Commonwealth's Exhibits No. 18A, No. 18B, and 18C were received in evidence.)

Mr. Hassan: Commonwealth's 18D, sir, is your Number 5, tell us what that is.

The Witness: That would be a close view of a spot of tar on a tin on the right rear wall of the building.

Mr. Hassan: I offer that into evidence, Your Honor. Commonwealth's No. 18E, your Number 4.

The Witness: That would be a close view of the rear of the building, just below the top rear wall showing a large black cable with fresh tar marks and a bent cable clamp.

The Court: Would you show me, I can't quite translate 18D, which end is up.

The Witness: The picture was taken through a ladder.

Mr. Hassan: Would you mark that picture as to top and bottom?

The Court: Are you looking at a vertical wall here on the side of the building?

The Witness: If you can see one of these other pictures, I think you could understand it, this is part of the marquee going out of here and this is a marquee here at the end of the roof.

page 1287 } Mr. Hassan: Where was the ladder?

The Witness: I put the ladder up for my own use.

Mr. Hassan: That would extend to the buildings in the rear, is that the Seven Eleven, or the other side?

The Witness: That is the Seven Eleven, that would be the wall below this (indicating).

The Court: Is there an objection to 18D and E?

Mr. Harrigan: To the pictures, I have no objection, the only objection is to the conclusions, the statements.

The Court: As to what was shown?

Mr. Harrigan: No, I don't object to what is shown, if that

Charles Taylor

is what it looked like when he took the picture, I am satisfied.

The Court: All right, that will be received as 18D.

(The photographs previously identified as Commonwealth's Exhibits No. 18D and No. 18E were received in evidence.)

Could you say, Officer Taylor, that these are views of the side of the marquee?

The Witness: That would be actually the back of the building, now that is the rear building.

page 1288 } The Court: 18D then is the side of the building?

The Witness: Right.

The Court: Shot through the rungs of the ladder?

The Witness: No, they are both from the back of the building.

A Juror: Could this one be explained again, please, there's been so many pictures.

Mr. Hassan: I intend to have more testimony on it. He said he took this one through the rungs of a ladder.

Mr. Harrigan: I would just as soon let the witness explain it since he is the one that took it.

Mr. Hassan: I am just repeating the witness' testimony, Your Honor.

The Court: Officer Taylor, you can go down there to the jury box and point out what is on that picture.

The Witness: This is taken right just below the roof, when I got up I had to put a ladder up there, this is the top of the picture, this is one part of the ladder here (indicating), and this is the other part of the ladder over here (indicating), and I had to take it over the rungs of the ladder.

A Juror: What is that (indicating)?

The Witness: That is the tar spot (indicating).

A Juror: An aluminum ladder?

page 1289 } The Witness: That's right, I placed it there for my own use (indicating).

Mr. Hassan: I show you your picture, Number 6, sir, and ask you if you will tell us what that is?

The Witness: A view of the right rear corner of the building showing the covering of the rear wall, showing a covering of the roof over the side wall.

Mr. Hassan: I would like to offer that as Commonwealth's 18H.

Charles Taylor

I show you your Number 7, sir, and ask you what that is.

The Witness: That would be a close view of the top corner of the right rear of the building, the same building and so forth.

Mr. Hassan: I show you your Number 8.

The Witness: Number 8 would be the same as Number 7, which was also taken from the ladder, Number 7 was a close view of the rear corner of the building.

Mr. Hassan: Commonwealth's F, Your Honor.

The Court: Is there an objection to F, G, and H?

Mr. Harrigan: No objection, I take it the pictures reflect what was there when you took them?

page 1290 } The Witness: Right.

Mr. Hassan: What day did you say these were taken?

The Witness: These were taken on the 26th, the morning of the 26th.

The Court: Officer, let me ask you in respect to this one which is 18H, does tht and F and G show the same corner of the building?

The Witness: Right.

The Court: What corner is that?

The Witness: That will be the right rear of the building which will be the east of the end of the buidling.

The Court: Is this the Seven Eleven?

The Witness: No, the other end.

The Court: Goodwill Industries?

The Witness: Right.

The Court: They will be received as 18F, G, and H.

(The photographs previously referred to were marked Commonwealth's Exhibits No. 18F, No. 18G, and No. 18H for identification and received in evidence.)

Mr. Hassan: While they are looking at those,
page 1291 } I show you Commonwealth's Exhibit No. 7C,
which has been received in evidence and ask
you, sir, if that is your Number 10, I ask you to look at that,
sir, and tell the Court what that is.

The Witness: A view of the east end of the shopping center from the parking lot.

Mr. Hassan: From the parking lot, I would like to show this to the jury again, Your Honor, this is the other side of that wall.

Charles Taylor

The Court: All right.

A Juror: This is taken from the east end of the shopping center?

The Witness: Right.

Mr. Hassan: That is the Goodwill Industry.

I show you your number 11 which has been admitted as 7B, sir, and ask you what that is?

The Witness: A view of the shopping center from across Wilson Boulevard, the six thousand block.

Mr. Hassan: That has been previously admitted and shown to the jury, Your Honor.

The Court: Mr. Hassan, are you ready to suspend on this witness?

Mr. Hassan: I beg your pardon.

The Court: Are you ready to suspend on this page 1292 } witness or do you have a lot more testimony?

Mr. Hassan: I have a lot more testimony, but I would like to get the rest of these pictures, his testimony then comes from his examination of evidence that he gathered at the scene.

The Court: All right.

Mr. Hassan: I would like to show you your picture Number 9, which is our 18J, sir, and ask you what that is?

The Witness: That would be a view across the roof from the roof of the walk looking east above the entrance of 6029 Wilson Boulevard.

Mr. Hassan: By the roof, over the roof you mean, a canopy-type?

The Witness: Canopy-type or marquee, whatever you want to call it.

Mr. Hassan: I would like to offer that, Your Honor.

I show you Number 12 which is 18I.

The Witness: That would be a view of the center of the shopping center showing 6027 and 6029, taken across Wilson Boulevard.

Mr. Harrigan: What time did you take the last picture there? It looks like it was pretty dark out.

The Witness: Late in the afternoon.

page 1293 } Mr. Hassan: On the 26th?

The Witness: That's right.

Mr. Hassan: Let me ask you a question on this, on all of those pictures on the 26th, do you know that the photographs looked the same on the 26th as they did, say, 12:30 on the 25th?

Charles Taylor

The Witness: In what way, looked the same?

Mr. Hassan: I mean there were a lot of people running around there, up and off the roof, weren't there?

The Witness: No, sir.

Mr. Hassan: You are saying that there wasn't?

The Witness: No, sir, only three people up there on the roof to my knowledge.

Mr. Hassan: That is all, I just wondered.

The Court: I and J will be received.

(The photographs previously identified as Commonwealth's Exhibits No. 18I and No. 18J were received in evidence.)

Ladies and gentlemen of the jury, I thank you for sitting with us so late.

I received a communication from a juror earlier today asking for certain evidence and I took it up with page 1294 } counsel. They advised me that the evidence that was requested will be presented in due course, as the trial develops. so I anticipate that you may receive all that you ask for in that respect before we are through.

We will now recess until 10:00 o'clock tomorrow morning, and I will see you at that time.

Officer Taylor, you are excused until 10:00 o'clock tomorrow morning. During the recess, do not discuss the case with anyone except the Commonwealth Attorney or the defense counsel.

The Witness: Okay.

(Witness excused.)

The Court: Who is your witness?

Mr. Hassan: Mr. Vidnjevich, he has not been sworn, Your Honor, and I would like to have him excused until we call for him. I believe it will be late Wednesday.

The Court: All right. Will you take the oath, sir?

(One witness was sworn.)

The Court: Mr. Vidnjevich.

The Witness: Yes, Your Honor.

The Court: I am advised that your testimony will not be required until probably late Wednesday, so you are excused

Charles Taylor

and free to go, but would you remain on call
page 1295 } for either the prosecution or the defense.

Do you know how to get in touch with him,
Mr. Hassan?

Mr. Hassan: Yes, I do.

Mr. Morris: He is up at the Nazi Headquarters and he declines to talk to us, Your Honor, so it won't make any difference.

The Court: Mr. Vidnejevich, until you have completed your testimony in this case, you are not to discuss your testimony with any person except the Commonwealth Attorney and the defense counsel, you do not have to talk to any of them, but if you wish to talk to them, you may, but not anyone else.

The Witness: Yes, Your Honor.

The Court: All right. You are excused and free to go.

* * * * *

page 1302 }

PROCEEDINGS

The Court: Do you want to continue with Officer Taylor?

Mr. Hassan: Yes. Your Honor.

The Court: Call Officer Taylor back to the stand. Call the Jury.

Whereupon, CHARLES TAYLOR, resumed the stand, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION
(resumed from Dec. 4, 1967)

By Mr. Hassan:

Q. Officer Taylor, at the time that you made those pictures which we introduced last night, did you make any examination for any evidence?

A. I did.

Q. And what examination did you make?

A. I looked for finger prints and also took some paint samples.

Q. And where did you do your examination for finger prints?

A. On the flushing above the wall at 6029.

Charles Taylor

page 1303 } Q. How did you do this examination?
A. With finger powder placed over the surface.

Q. And did there come a time when you discovered any prints?

A. I did not.

Q. And did you conduct any other examination?

A. I looked at some finger prints on the dividing wall between the building.

Q. And do you know where that was?

A. The wall separating the building 6029 from the next building west of it, the fire wall between the buildings.

Q. And what other examination did you make?

A. I collected some tar samples from the roof.

Q. And did you collect any other samples?

A. Also samples of sand and gravel from the roof and sidewalk.

Q. Now, I'd like you to examine that envelope, sir, (handing to witness) and tell me whether or not you know what that is?

A. It should be a pill box containing green and white paint samples.

Q. And does—did you make that envelope up?

A. Yes I did. I signed it and dated it and the time I collected it.

page 1304 } Q. And what is the date?

A. August 27 at 8:00 a. m.

Q. And is that the date that you collected it?

A. No sir. That's the date I turned it over to the property officer.

Q. Does it show the date you collected it?

A. No sir, it doesn't.

Mr. Hassan: I'd like to have that marked for identification.

(Whereupon, Commonwealth's Exhibit No. 19 was marked for identification.)

By Mr. Hassan:

Q. What date did you collect it?

A. On the 25th.

Q. And from the 25th until the 27th where was it?

A. Locked in the evidence cabinet in our office.

Q. By office, what do you mean?

Charles Taylor

A. In the office of identification in the police investigation office in the Detective Bureau.

Q. Now, will you open that up, sir.

What do you have there?

A. This will be a white paint scraping above page 1305 } the Econ-o-wash sign at 6027 Wilson Boulevard.

Q. Will you open that and see if that's what is in that box?

A. Yes sir, it is.

Q. And did you make this notation on this box?

A. Yes, I did.

Q. And what is that other box?

A. That will be the green paint scrapings from the wall above the same address.

Q. Did you make that notation on that box?

A. Yes I did.

Q. Did you collect these samples?

A. I did.

Q. On the 27th, what did you do with them?

A. I took them back to the office and locked them up in the cabinet. I finally turned them into the property—where the property is collected at the police counter to the officer on duty.

Q. What was the time on that?

A. 8:07 on the 27th.

Mr. Hassan: If Your Honor please, I would like to offer these in evidence at this time.

The Court: Is there objection?

page 1306 } Mr. Harrigan: Yes Your Honor.

I would like to ask a couple of questions.

The Court: Go ahead.

EXAMINATION BY COUNSEL FOR THE DEFENDANT

By Mr. Harrigan

Q. Now, what date did you say you took the samples off the Econ-o-wash sign?

A. I apparently made a mistake. I took them on the 26th, the following day, when I returned to the roof of the building.

Q. So you took them on the 26th?

A. Yes.

Q. You're sure of that?

A. Yes. That's my note on the top of the box.

Charles Taylor

Q. So you're relying on that?

A. I'm relying on the note on the boxes, yes. I signed the box when I collected the evidence and kept them until I returned, gave them to the property clerk the next morning.

Q. You say you turned them into the property room?

A. I turned them into the sergeant on duty at the counter who turned them into the property room.

Q. Who was that?

A. Sergeant Willett who was on duty at the
page 1307 } property room.

Q. Do you know if anybody opened those boxes?

A. No, I do not.

Q. All right.

Now, do you know whether Sergeant Willett opened them?

A. No. I gave them to him sealed.

Q. Were they sealed just now when you took them out of the box?

A. Yes.

Q. The same seal?

A. Yes sir.

Q. You're telling me they never have been opened?

A. They appeared not to be opened. The other envelope had been opened but the boxes appeared to be sealed.

Q. So that seal has never been broken?

A. It didn't appear to, no sir.

Q. Just—where's this seal you're talking about? Show me a seal.

A. This piece of scotch tape.

Q. That's on the back.

Let me see the front.

A. I'm sorry. There's no seal on them. I sealed them in the envelope and not the boxes.

page 1308 } Q. So they weren't sealed?

A. No sir.

Q. So they could have been opened and closed a number of times and you couldn't tell the difference?

A. No sir, I could not.

Q. All right.

Now, that's the white paint we're talking about now?

A. It would be the same for both boxes.

Q. Now, you have another box there with some green paint in it?

A. Yes sir.

Charles Taylor

Q. Now, that box is about identical with the other?

A. Yes sir, they are.

Q. That wasn't sealed either was it?

A. No sir.

Q. Now, you said you got that on the 25th, too, is that wrong?

A. That's wrong. They were both—the same—just about the same time on the 26th.

Q. All right.

Now, can you tell if that box has been opened or not?

A. No sir. There's no seal on that box either.

Q. I said could you tell if that had been
page 1309 } opened?

A. No sir.

Q. There isn't any way that you can identify those little white things in the box independent of the box itself, is there?

A. I don't quite understand you.

Q. There isn't any way you can identify those little—what are they gray or white?

A. Dirt and white paint I scraped off the surface. There's no way I can identify it, no.

Mr. Harrigan: I don't have any further questions. I don't think there's been any proper foundation.

The Court: The objection is sustained.

By Mr. Hassan:

Q. Now, I show you 28885, sir, and ask you to examine that envelope and tell me whether or not you know what that is?

A. This should be two boxes, two pill boxes containing tar samples above 6029 Wilson Boulevard.

Q. From where?

A. 6029 Wilson Boulevard.

Q. When did you get those samples?

A. They should be marked on the box as they were and sealed in the envelope. I turned them in on the
page 1310 } 27th at 8:00 o'clock.

Q. Did you obtain those at the same time you obtained the paint samples?

A. I'm pretty sure I did. This should be noted on the box.

Mr. Hassan: I offer that as Commonwealth's 20 for identification.

Charles Taylor

(Whereupon, Commonwealth's Exhibit No. 20 was marked for identification.)

By Mr. Hassan:

Q. I'd like you to open that, sir, and tell me what the contents are?

A. It will be the tar samples.

Q. Were they both taken from the same location or from some other?

A. They were all taken from the roof of the building. One was taken from the 6029—and one was taken from the rear wall.

Q. Now, the one from 6029, which box is that?

A. It would be box No. 2.

Q. Box No. 2.

And when you say from the rear wall, will you
page 1311 } you describe where you took it from the rear
wall?

A. The metal flashing on the east of the building on the right rear corner.

Q. Is that on the end of the building where the Goodwill shop is?

A. That's right.

Q. And that's in box No. 1?

A. That's box No. 1, that's correct.

Mr. Hassan: I offer these in evidence, Your Honor.

The Court: Do you wish to examine as usual?

Mr. Harrigan: Yes Your Honor.

EXAMINATION BY COUNSEL FOR THE DEFENDANT

By Mr. Harrigan:

Q. Now, this box No. 1, what did you say this was?

A. The tar samples from the back of the building. The wooden sticks were used to pick up the tar samples. The only instruments we had.

Q. When you talk about "we", who are you talking about?

A. The Identification Bureau. This is all we had.

Q. Was somebody working with you?

A. When I say "we", it's the Identification Bureau.

Q. You're talking about yourself then?

A. Yes sir.

page 1312 } Q. All right.

Charles Taylor

Now, did you mark any of these sticks or anything so you'd know they're the sticks you're talking about?

A. No sir, I did not.

Q. And there isn't any particular marking on anything in this box, is there?

A. No sir, there is not.

Q. Neither of these boxes were sealed either, were they?

A. No sir, they were not.

Q. What's your initials?

A. C.E.T.

Q. Well, you can't even identify this box, can you?

A. No sir, I cannot.

A. No sir.

Mr. Harrigan: That's all.

No foundation, Your Honor.

By Mr. Hassan:

Q. Did you place these tar samples in that box yourself, Mr. Taylor?

A. I did.

Q. And when—what did you do with them on the 27th?

A. I turned them into Sergeant Willett at the page 1313 } desk.

Q. How did you turn them into him?

A. I turned them in in a brown envelope that I had labeled with the date and time.

Q. Was that sealed when you turned it in to Sergeant Willett?

A. Yes.

Q. Is this the same envelope?

A. Yes sir, it is.

Mr. Hassan: I'm offering them, Your Honor.

The Court: The objection is sustained.

Commonwealth has leave to complete its chain of custody on later testimony.

By Mr. Hassan:

Q. Now, I show you envelope 23880 and ask you, sir, what that is?

A. These would be the footprint liftings from the tin over the firewall at 6029 Wilson Boulevard.

Q. Did you lift those yourself?

Charles Taylor

A. I did.

Q. When did you lift them?

A. On the 25th approximately 2:30 in the afternoon.

Q. And then, what did you do with them?

A. Turned them into the property room or to
page 1314 } the officer on the desk at the time.

Q. When did you do that?

A. I don't have the receipt on that. It's inside the envelope here.

That was on the 26th at 8:59 in the morning.

Q. Who did you turn that into?

A. Officer Mitchell.

Mr. Hassan: I'd like to offer these at this time.

The Court: When were they turned over to Officer Mitchell?

The Witness: On the 26th at 8:59 in the morning.

Mr. Hassan: I'd like to have this marked for identification as Commonwealth's No. 21, containing six prints.

(Whereupon, Commonwealth's Exhibit No. 21 was marked for identification.)

The Court: Officer Taylor, where did you lift these footprints; on the roof of what?

The Witness: 6029.

The Court: In what particular location there?

The Witness: Several locations along the ledge of the building from the front wall to the rear.

The Court: Would it be up on the dividing
page 1315 } wall?

The Witness: The fire wall or dividing wall.

The Court: It would be all up on the dividing wall?

The Witness: Right.

The Court: What hour of the day of the 25th did you lift them?

The Witness: I believe it was about 2:30 in the afternoon.

By Mr. Hassan:

Q. Now, Officer Taylor, will you examine these and tell us what they are and how you obtained them?

A. These are the footprints that I collected. I collected them from the firewall and they were obtained by placing fingerprint lifting tape over the surface and when I did, it lifted the paint off from the surface.

Charles Taylor

Q. Can you tell from which location the prints came?

A. No sir.

They ran from the wall towards the rear of the building, to the west of 6029, the wall separating 6029 to the west.

Q. Do you know what 6029 is?

A. That would be the beauty parlor, I believe.

Mr. Hassan: I'm going to offer this in evidence.

The Court: Is there objection?

page 1316 } Mr. Harrigan: I'd like to ask him a couple of questions.

EXAMINATION BY COUNSEL FOR THE DEFENDANT

By Mr. Harrigan:

Q. What day did you do this?

A. That was on the 25th.

Q. What time?

A. Approximately 2:30 in the afternoon.

Q. How many sets of prints did you pick up there, different sets which were obvious to the naked eye?

A. I believe there were six.

Q. All six were different?

A. No. They were quite similar. They all appeared to be from the same type of shoe.

Q. Every one of them?

A. Yes sir.

It was evident someone had walked one foot in front of the other the length of the wall in the water.

Q. It appeared to be from a sneaker?

A. Yes it did.

Q. And it had big designs on it, didn't it?

A. Have a small design.

Q. Did you see any sneaker prints up there with a design on it?

A. No sir, I didn't, other than these.

Q. Now, I take it these are all marked?

Mr. Hassan: They're all one exhibit.

Mr. Harrigan: Which is 20.

Mr. Hassan: No, 21.

The Court: 21.

Mr. Harrigan: 21, all right.

Charles Taylor

By Mr. Harrigan:

Q. Is that your initials down there?

A. Yes it is.

Q. Now, whose fingerprints are all over that card, is that yours?

A. They are my fingerprints.

Q. What kind of tape is this?

A. Fingerprint lifting tape.

Q. Did it lift all the paint?

A. I'm sorry, I didn't hear you.

Q. Did it lift all the paint?

A. Except for the chips left.

Q. So that's not the true representation of what that showed before you put the fingerprint tape on it?

A. No sir, not actually the particular foot-page 1318 } print or anything.

Q. How about this one, would that hold true, too?

A. It will.

Q. Maybe—where is your footprint on that one?

A. These footprints are very faint and to photograph them it would have been, I felt, would have been useless and I put the tape on them and the oil or whatever it was on the footprint, it absorbed into the tape and it's very faint. Some of them it's impossible to see unless you got full light.

Like I say, I examined these in full light and I can't examine them in here.

Q. So that's not a true representation of what you saw at that time either?

A. No sir.

Q. What does that one show?

A. It's just of the paint. Like I say, it would be almost impossible to see them without proper light.

Q. That holds true for all of them, I guess.

A. Right.

Q. This would be the pattern right here?

A. Um hmm. Yes sir.

Q. Is this all of them that you lifted?

A. I lifted six. I believe there are six here.
page 1319 } Yes sir, there's six.

Q. What did you do with these after you put them on this paper?

A. I initialed them and put them in the envelope and turned them in as I did the other property.

Charles Taylor

Q. You turned them in. What time?

A. 8:59 in the morning.

Q. It says 2:30 here?

A. That's the time I collected them. They were collected on the 25th at 2:30 in the afternoon and I turned them in on the 26th at 8:59 in the morning.

Q. Where were they all—

A. (interposing) They were all locked up in the cabinet in the Identification Bureau.

Q. Were they in this envelope the whole time?

A. Yes they were.

Q. Now, can you tell us whether you know that these, whether they've been looked at or have been out of this envelope or anybody has tested them or anything or changed them?

A. I could not.

Mr. Harrigan: I would object to those at this time on the ground the foundation is still uncomplete. page 1320 }

Mr. Hassan: I'm offering them any way.

The Court: Officer, are you able to tell by any marks that you made on those that they are the footprints that you lifted at that time?

The Witness: I have my initials on the bottom of each sheet.

The Court: Do they appear to be substantially in the same condition as they were when you turned them over to Officer Mitchell?

The Witness: Yes they do.

The Court: The objection is over ruled.

They will be received in evidence as one single exhibit, or 21A, B, and C and so forth.

Mr. Hassan: I think a single exhibit is all right, Your Honor.

(Whereupon, Commonwealth's Exhibit No. 21 was entered into evidence.)

By Mr. Hassan:

Q. Officer, would you take a look at 23883 and tell me if you can what that is?

A. This will be a pill box containing a tar sample.

Q. And did you mark that envelope?

Charles Taylor

page 1321 } A. I did.

Q. Does that show where you obtained that from?

A. It does, 6029 Wilson Boulevard.

Q. When did you obtain it?

A. 2:30 in the afternoon on the 25th.

Q. What did you do with it?

A. I turned it in approximately 5:30 to Officer Skinner at the police counter.

Q. What day was that?

A. On the 25th.

Mr. Hassan: I'd like to have this marked for identification as Commonwealth's 22.

(Whereupon, Commonwealth's Exhibit No. 22 was marked for identification.)

By Mr. Hassan:

Q. Now, sir, will you please open that and tell us what you find in there?

A. This is the tar sample.

Q. And does the box indicate what is contained therein?

A. No sir, it does not.

Q. Do you recognize the contents as something you did yourself personally?

page 1322 } A. Yes sir, I did.

Q. Everything in the box?

A. Yes sir.

Mr. Hassan: I offer that in evidence, Your Honor.

The Court: May I see it?

Do you wish to examine, Mr. Harrigan?

Mr. Harrigan: Yes, Your Honor.

The Court: Go ahead.

EXAMINATION BY COUNSEL FOR THE DEFENDANT

By Mr. Harrigan:

Q. This is the same type of box, isn't it?

A. Yes it is.

Q. And they're all the same, aren't they?

A. Yes sir.

Q. You can't tell one from the other?

Charles Taylor

A. No sir, I cannot.

Q. Did you make any kind of mark on the contents of this box?

A. I did not.

Q. Was there anything special about this piece of paper or piece of tar which would distinguish it from any other piece similar?

A. No sir, there is not.

page 1323 } Q. Do you know of anybody—was this box sealed?

A. No sir, it was not. It was in the envelope that was sealed.

Q. Is this your writing?

A. Yes sir, it is.

Q. Now, when did you collect this?

A. That was on the afternoon of the 25th.

Q. What time?

A. In my note it says 2:30. I don't have it on this slip here.

Q. You don't know?

A. No sir, I don't. I have it marked 2:30 in the afternoon.

Q. Is that the time you collected it or the time you turned it in?

A. That's the time I collected it.

Q. Can you tell whether anybody has been in this box or not?

A. No sir, I cannot.

Q. Is this box any different than it was when you put it in the bag?

A. Those marks are someone's initials are on the top of it.

Q. So obviously someone's been in it?

page 1324 } A. Right.

The Court: You did not put that symbol CY5 on there?

The Witness: I did not.

Mr. Harrigan: Same objection, Your Honor.

The Court: The objection is sustained.

By Mr. Hassan:

Q. Now, Officer Taylor, why did you collect Commonwealth's Exhibits 19 through 22?

A. You're referring to the tar samples?

Q. The whole chain that we just introduced?

Charles Taylor

Mr. Harrigan: I would object to the form of the question, Your Honor, as to why he collected—what he did and what he collected or something unless it is admissible which it hasn't been up to this time.

The Court: Objection over ruled.

Mr. Harrigan: Exception.

By Mr. Hassan:

Q. Why did you collect Commonwealth's Exhibits 19, 20, 21, and 22.

A. For anybody to be up to the roof, the possibility that they might have paint of them and tar on their foot prints and to collect all evidence that might be useful
page 1325 } in the further—

Q. (Interposing) Did you intend to do anything with it yourself?

A. I did not.

Q. What did you intend to do with it?

A. To be sent for analysis or for testimony or for whatever could be found out.

Q. Did you collect any other evidence?

A. I did.

Q. Do you have the property number on that?

A. I don't have numbers that correspond to your numbering. I have property sheets containing items 1 through 17, pint boxes containing samples of sand and gravel.

Q. You don't know what that number is?

A. No sir, I do not.

Q. I show you 23910, and 30 will be another one.

Will you examine that box, sir, and tell me whether or not you recognize the box?

A. No sir.

Q. Will you open that box and see what's in it?

A. There's a box containing the samples.

Q. And do you recognize the contents of the box?

A. Yes I do.

page 1326 } Q. And is that something that you yourself collected?

A. It is.

Q. And would you tell us where you collected it?

A. I started at 6015 Wilson Boulevard and I went from there to Bon Air Park, so here's a number of locations.

Q. What did you gather?

A. All samples of sand and gravel in the various locations.

Charles Taylor

Q. Would you select the one from 6015, sir?

Can you identify that particular carton?

A. Yes I can.

Q. How do you identify it?

A. I dated it, put the date and time and initials on it and labeled it number one.

Mr. Hassan: I would like to offer this as Commonwealth's Exhibit No. 23 for identification.

(Whereupon, Commonwealth's Exhibit No. 23 was marked for identification.)

By Mr. Hassan:

Q. You didn't put that printed tape on there, did you?

A. No sir, I didn't.

Q. Will you break that sir, and tell us what's page 1327 } inside of it?

A. It would be black gravel.

Q. Put that tape inside there.

By the way, what does that tape say?

A. "Evidence" and also "F.B.I.".

Mr. Harrigan: I object to what the tape says.

The Court: Objection is sustained.

Mr. Hassan: I offer this in evidence.

The Court: Do you have objection, Mr. Harrigan?

EXAMINATION BY COUNSEL FOR THE DEFENDANT

By Mr. Harrigan:

Q. Look at this little box here. Did you seal this thing up?

A. I did. They were all sealed with scotch tape.

Q. Where is the scotch tape?

A. It's been removed.

Q. So this is changed somewhat?

A. Yes.

Mr. Hassan: I object to that. This is just a waste of time. He knows fully well I'm laying the ground work for the F.B.I. experts.

The Court: Well, I think you're right. It seems to me what we ought to do with this evidence is to let Officer page 1328 } Taylor testify as to his collection of it, what

Charles Taylor

each sample represents and let him stop there and I'll—let them be marked for identification and you can complete your chain of custody. You know in advance what the ruling is going to be.

Let the record show that your objection is a continuing one and your objection is sustained in each case in view of the fact that he can't identify the contents and doesn't know what happened to them after he relinquished custody and I will require the Commonwealth to complete its chain of custody of them so you won't have to cross examine and restate your objection each time.

So we might go ahead and let him testify to where they went to.

Mr. Harrigan: I don't want to relinquish my right to examine as to the contents. It's pretty obvious he doesn't know. He can't identify each as to where it came from.

Mr. Hassan: He just said, I gathered this at 6015 and it's black dirt.

The Court: I guess Mr. Harrigan wants to be sure it's black, is that what you want?

Mr. Harrigan: It's the stuff he gathered, that's what I want to be sure of. It was obviously opened page 1329 } and taken out and there's all kinds of containers. I want to make sure it's the same thing he's talking about.

The Court: I don't think he can ever tell you that. I think all he can do is say he turned it over to somebody else. You'll have to take that up with subsequent people to see what happened to it.

Go ahead on that basis, Mr. Hassan.

By Mr. Hassan:

Q. Let me have box 2, 3, and 4.

I'm going to ask that this be sealed by the clerk.

Now, number 2. What is that? Did you make a notation on that?

A. It's marked group of 6027 Wilson Boulevard, 8-30, and my initials and the time, 6:45 p. m.

Q. What was the date?

A. August the 30th.

Q. And what does it contain?

Don't open it, just tell me what it contains.

A. The sand and gravel samples from the roof of 6027.

Q. Now open it and tell me if that's what you put in it?

Charles Taylor

A. It would be more black gravel.

Mr. Hassan: I would have that marked for page 1330 } identification as Commonwealth's 24.

(Whereupon, Commonwealth's Exhibit No. 24 was marked for identification.)

The Court: Officer Taylor, that first one you had, which was our Exhibit No. 23, you say was from 6015 Wilson Boulevard, was that from the roof?

The Witness: All of these are from the roof, yes.

The Court: All right.

By Mr. Hassan:

Q. Box No. 3.

A. It would be the roof above 6135 Wilson Boulevard, August 30, '67, 6:45 p. m.

Q. 6135?

A. That's right.

Mr. Hassan: I'd like to have that marked as 25.

(Whereupon, Commonwealth's Exhibit No. 25 was marked for identification.)

By Mr. Hassan:

Q. And No. 4?

A. Would be from the front of 1029 North Larrimore Street and over the catch basin and sidewalk, page 1331 } August 30, my initials, and 7:15 p. m.; and number 4—

Q. And this was from—not from a roof?

A. No sir, it was not. It was from a sidewalk catch basin.

Q. Sidewalk catch basin.

Mr. Hassan: I would like to have that marked as 26.

(Whereupon, Commonwealth's Exhibit No. 26 was marked for identification.)

By Mr. Hassan:

Q. Now, will you open this sir and tell us whether or not—what you put in it? (handing box No. 3 to witness)

Charles Taylor

Mr. Hassan: I offer box No. 2, Your Honor.

The Court: Objection is sustained.

By Mr. Hassan:

Q. Is that what you put in it?

A. Yes sir, it is.

Mr. Hassan: I offer No. 3, Your Honor.

The Court: Why don't you use the exhibit number if they're on there.

Mr. Hassan: Exhibit No. 29.

The Court: Objection is sustained as to Exhibit 1332 } hibits 23, 24, and 25 for identification.

By Mr. Hassan:

Q. Please open No. 26 and tell us whether that's what you put in there? Is that what you put in there?

A. Yes sir.

Q. Will you pick out the next four boxes please?

Mr. Hassan: If Your Honor please, I would like to show the defense counsel is taking samples from each box.

Mr. Morris: We were going to—

Mr. Hassan: As long as they don't throw it at me—

Mr. Morris: (Interposing) We were going to show for the record that we were going to throw it at him.

By Mr. Hassan:

Q. Will you tell us what box 5 is?

A. From the sidewalk of 1029 Larrimore Street.

The Court: What was that address, Officer?

The Witness: 1029 North Larrimore Street.

The Court: Where was it collected from?

The Witness: From the sidewalk.

The Court: That's the same address as the previous one?

The Witness: Yes. One was the sidewalk and one was the catch basin.

page 1333 } By Mr. Hassan:

Q. Would you open that, sir, and tell me whether or not that's what you put in it?

A. Yes it is.

Charles Taylor

(Whereupon, Commonwealth's Exhibit No. 27 was marked for identification.)

By Mr. Hassan:

Q. And would you tell us what box No. 6 is?

A. It will be from the rear of 1024 Arlington Mill Drive at the gate, August 30, 10:26 p. m., my initials, and numeral 6.

Mr. Hassan: I would like to have that marked for identification as Commonwealth's No. 28.

(Whereupon, Commonwealth's Exhibit No. 28 was marked for identification.)

Mr. Hassan: I offer Commonwealth's Exhibit No.—

The Court: (Interposing) The last you offered in evidence was 25.

Mr. Hassan: I'm going to ask this be remarked, Your Honor. It's been all snudged.

I offer what is 25.

page 1334 } The Court: The last you moved into evidence is 25.

Mr. Hassan: I thought I moved in 26 into evidence also, Your Honor.

The Court: The objection is sustained on 26.

Why don't you wait and move them all at one time, Mr. Hassan?

Mr. Hassan: Yes, Your Honor.

By Mr. Hassan:

Q. Would you open this, sir, and tell me whether or not, whether or not that is what you put in it?

A. Yes it is.

Q. And tell us about box—

The Court: (Interposing) Before you get away, let me get a note on 28.

What does 28 represent, Officer Taylor?

Mr. Hassan: 28 represents Arlington Mill Drive at the gate.

By Mr. Hassan:

Q. What is this box you have here now?

A. 1028 Arlington Mill Drive by a bush, also near the gate and rear of the house, August 28, my initials, and 8:27.

Charles Taylor

Mr. Hassan: I would like to have this marked as 29.

(Whereupon, Commonwealth's Exhibit No. 29
page 1335 } was marked for identification.)

By Mr. Hassan:

Q. I would like to have you open Commonwealth's Exhibit No. 29, sir, and tell me whether or not that is what you placed in there?

A. Yes it is.

Q. Now, would you tell me what is in that box?

A. This was taken in the front of 1024 Arlington Mill Drive at August 30, 7:20 p. m. and my initials and number 28.

Mr. Hassan: I'd like to have this marked for identification as No. 30.

(Whereupon, Commonwealth's Exhibit No. 30 was marked for identification.)

By Mr. Hassan:

Q. I'd like to have you open No. 30, sir, and tell us whether or not that's what you put in there?

A. Yes sir, it is.

Q. Take out four more of them.

Tell us what that is sir?

A. This will be from the creek bed opposite 1024 Arlington Mill Drive on August 30, approximately 7:30,
page 1336 } my initials and the number 9.

Mr. Hassan: I would like to have this marked for identification as No. 31.

(Whereupon, Commonwealth's Exhibit No. 31 was marked for identification.)

By Mr. Hassan:

Q. Will you open No. 31, sir, and tell us if that's what you put in there?

A. Yes it is.

There's a clip in the box, too.

Q. Did you have something that you did not put in there?

A. I did. It's a pill box and my initials with the contents

Q. Will you tell us what the next one is?

Charles Taylor

A. It would be in the creek bed of Four Mile Run at 1024 Arlington Mill Drive, my initials and 7:30 p. m.

The Court: Is that opposite the same address on Arlington Mill Drive, 1024?

The Witness: That's right.

(Whereupon, Commonwealth's Exhibit No. 32 was marked for identification.)

page 1337 } By Mr. Hassan:

Q. Would you open that and tell us if that's what you put in there, sir?

A. Yes it is.

There's also a pill box and initials and in the other one—

Q. (Interposing) Can you identify the next one?

A. It would be the railroad bed in front of 1024 Arlington Mill Drive, August 27, and my initials and box No. 11.

Mr. Hassan: I'd like to have that marked as No. 33.

(Whereupon, Commonwealth's Exhibit No. 33 was marked for identification.)

By Mr. Hassan:

Q. Will you open this one and tell us whether that's what you put in there, sir?

A. Yes it is.

Q. And will you identify that one?

A. It would be from the creek bed in front of Arlington Mill Drive, August 30, 7:00 p. m., my initials, and box No. 12.

The Court: That becomes No. 34 doesn't it?

Mr. Hassan: 34.

page 1338 } (Whereupon, Commonwealth's Exhibit No. 34 was marked for identification.)

By Mr. Hassan:

Q. Would you open that and tell us whether that's what you put in there, sir?

A. Yes it is. There's also an initialled pill box.

Q. Would you identify the next one?

Charles Taylor

A. This will be also from the creek bed of 1024 Arlington Mill Drive, initialled, and 7:30 p. m. and number 13.

Mr. Hassan: No. 35.

(Whereupon, Commonwealth's Exhibit No. 35 was marked for identification.)

By Mr. Hassan:

Q. Will you open that, sir, and tell us whether or not that's what you put in it?

A. Yes sir.

Q. Will you identify this next one, please?

A. From the end of the bridge location where a gun had been found, August 30, 1967, my initials and box No. 14, 7:30 p. m.

page 1339 } Mr. Hassan: No. 36.

(Whereupon, Commonwealth's Exhibit No. 36 was marked for identification.)

By Mr. Hassan:

Q. Will you open this sir, and tell us whether or not that's what you put in there?

A. Yes it is.

Q. Will you identify the next one?

A. It will be the roadway over the bridge where a gun had been found, August 30, 1967, 7:40 p. m., my initials, and No. 14.

Mr. Hassan: Will you mark this as No. 37.

(Whereupon, Commonwealth's Exhibit No. 37 was marked for identification.)

By Mr. Hassan:

Q. Examine this sir, and tell us whether or not that's what you put in there?

A. Yes, it will be—

Q. Will you identify that one please?

A. From the base of the merry-go-round—base of the bridge, August 30, 1967, 7:30 p. m., 17.

Charles Taylor

page 1340 } Mr. Hassan: I would like to have this one
marked for identification as 38.

(Whereupon, Commonwealth's Exhibit No. 38 was marked
for identification.)

By Mr. Hassan:

Q. Will you open this, sir, and tell us whether or not that's
what you put in there?

A. Yes it is.

Q. And will you identify this one?

A. That will be in the park at the bridge where the gun had
been found, August 30, 1967, 7:35 p. m., initialled, and number
77.

Mr. Hassan: I'd like to have this marked as 39 please.

(Whereupon, Commonwealth's Exhibit No. 39 was marked
for identification.)

The Court: Where did you say that was?

The Witness: In the park near the bridge where the gun
was found.

The Court: Thank you.

By Mr. Hassan:

page 1341 } Q. Take a look at that and tell us whether or
not that is what you put in there?

A. Yes it is.

Q. It is?

A. Yes.

Q. And this box, you cannot identify?

A. No sir, I cannot.

Mr. Hassan: I'd like to have the box marked as No. 40.

(Whereupon, Commonwealth's Exhibit No. 40 was marked
for identification.)

Mr. Hassan: I offer Commonwealth's Exhibits No. 23
through No. 40 into evidence.

The Court: Defense objects on the grounds previously
stated?

Mr. Harrigan: Yes, Your Honor.

Charles Taylor

One other point: I don't want to waive my right to cross examine on this either, on the part of insufficient foundation.

The Court: You may go ahead and cross examine. The Court is sustaining the objection that insufficient grounds have been made but opportunity will be given to the Commonwealth to connect up the chain of custody which page 1342 } might render them admissible.

Mr. Hassan: Before I go on, do you want a recess?

The Court: We shall have a short recess.

(Whereupon, a short recess was taken.)

The Court: Call the Jury.

By Mr. Hassan:

Q. Mr. Taylor will you please examine that envelope and tell us what that is?

A. It would be the remains of a steel jacket projectile removed from the headliner according to the County paint shop on August 25 at 3:30 in the afternoon.

Q. Did you remove that yourself?

A. I did.

Q. What did you do with it?

A. I brought it to the station and turned it in to Officer Skinner at 5:30 in the evening.

Mr. Hassan: I would like to have that marked for identification as Commonwealth's 41.

(Whereupon, Commonwealth's Exhibit No. 41 was marked for identification.)

The Court: When was this removed, Officer Taylor, from the car?

page 1343 } The Witness: The evening of the 25th at 3:30 in the afternoon.

By Mr. Hassan:

Q. Will you please open that and tell us what you find inside?

A. A piece of metal.

Q. Is the box marked in any way?

A. It's initialled and a number.

Charles Taylor

Q. Is that your initial?

A. No sir, it's not.

Q. Do you recognize that as what you placed in the box?

A. Yes I do.

Q. Did you mark that fragment?

A. No I did not.

Q. Would you examine that fragment and tell me whether or not it's marked?

A. Yes it is.

Q. And was it marked when you put it in the box?

A. No, it was not.

Mr. Hassan: I offer this in evidence, Your Honor.

Do you want to see it?

The Court: Are you able to tell by an examination of this metal fragment whether or not it's identical in page 1344 } appearance to that you placed in the box?

The Witness: It appears to be. It was damaged as it is now. That's about all I can tell you about it.

The Court: Objection?

Mr. Harrigan: Objection.

By Mr. Hassan:

Q. Where did you take it from; the headliner?

A. The headliner would be the right rear of the car just past the front seat.

The Court: What did you do with it?

The Witness: Put it in that box.

The Court: What did you do with the box?

The Witness: Sealed it up in the envelope and turned it in to Officer Skinner on the 25th.

The Court: The objection is sustained.

I'll consider that he has identified it as to the complete chain of custody to the point where it was turned over to Officer Skinner but evidently it has been marked by someone else who has had it since that time so I would require the Commonwealth to produce a further chain on it.

Mr. Hassan: One question on that point.

Mr. Harrigan: I still have some cross examination.

Mr. Hassan: Yes but I haven't finished my page 1345 } direct examination.

These officers who are named as receiving them from the witnesses we've had routinely sign their own names as that of the officer who put them in there.

Charles Taylor

Will it be sufficient to produce the original signature and the records of the property room or do you want the individual officers.

The Court: You're now talking about the next step of the officer at the desk who delivered it to the property room?

Mr. Hassan: The officer who receives it and gives the time and date and the officer who gets it from the property room and the officer who receives it at the property room and everytime somebody touches it, there is a signature and I don't know if you want the records of the signatures or those individual officers.

The Court: Mr. Harrigan?

Mr. Harrigan: I don't want to proffer what all of my objections are going to be because I don't know if there will be objections at that time or not. I would prefer to handle the evidence as it comes and handle the objections at that time.

The Court: Mr. Hassan is trying to save us page 1346 } some time if a regular business entry on the type of exhibit would satisfy the Court as to the chain of custody.

Mr. Harrigan: He can put it on any way he wants. If I don't think it's appropriate, I'll object.

Mr. Hassan: I want to do it the short way.

Mr. Harrigan: Unfortunately this is a murder case and I can't go the short way as I would a traffic ticket or something and if I did, I wouldn't think that I would be giving the defendant every right he's entitled to.

I can't waive anything.

The Court: I have to do some reading on it. If there's authorities justifying the business entries on evidence of this chain, I would be inclined to do so but it's been my impression that those who had the thing in their custody—

Mr. Hassan: (Interposing) This is further than I would care to go in the presence of the Jury.

I would be glad to cite the authority the first time the Jury is out. We've got plenty of time because I've still got a lot more to sweat out.

The Court: I anticipated that was the situation.

By Mr. Hassan:

Q. Now, Officer Taylor, did there come a time page 1347 } when you did anything else in connection with this case?

A. To the best of my knowledge, no.

Charles Taylor

Q. No more pictures, no more evidence that you handled in the chain of custody?

A. None at all.

Mr. Hassan: No further questions.

The Court: Mr. Harrigan?

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, on all of these exhibits marked 23 through 39 and taking for example, Exhibit No. 35, who put this 239110 on there?

A. I have no idea.

Q. So actually the only writing that you put on this—is that your writing on the top, Officer?

A. It is.

Q. So, if I took these tops off and changed them all around, you wouldn't know one from the other?

A. Those tops were sealed.

Q. They weren't sealed when you got them in today?

A. No sir.

Mr. Hassan: If Your Honor please, they were sealed.

By Mr. Harrigan:

page 1348 } Q. They weren't sealed by you?

A. No.

Q. So, if I changed these tops around, you wouldn't know which box was which would you?

A. No sir.

Q. Did you go around to the back of the building by the Seven Eleven store?

A. Yes I did.

Q. Did you take a picture of that area?

A. No, I did not.

Q. Would you describe to the Jury what that area looks like?

A. Just a parking area. That's about all I can say it is, just a parking area.

Q. There's a wall there that leads up to the building?

A. The rear wall. It would be the side wall of the Seven Eleven store. The buildings adjoin.

Charles Taylor

Q. So, if this is the side wall of the Seven Eleven and this is the front of the Seven Eleven and this would be Wilson Boulevard, right?

A. Right.

Q. Does this wall come right up to the building?

A. It does.

page 1349 } Q. How far is that wall from the roof?

A. I would have no idea.

Q. Did you look at it? Can you stand on the wall and look on the roof?

A. Not at all.

Q. You can't.

A. You have to use a ladder to get on the roof.

Q. Can you reach the roof from that wall?

A. No sir.

Q. No?

A. To the best of my knowledge, we had to use a ladder to get up on the roof.

Q. Well, then, you say you can't stand and look on the roof and reach the top, reach the edge of the roof?

A. To the best of my knowledge, no. I could be wrong.

Q. What is back there? Is there any trees?

A. Well, from that end of the building, if I can remember correctly, it's just a small parking area or loading area.

Q. There's a big Elm tree there, isn't there?

A. That's not the Seven Eleven store.

Q. What's that?

A. The Seven Eleven was added on to that shopping center later. It's not part of the original building.

page 1350 } Q. It's there now, isn't it?

A. Yes, it is.

Q. And the area we're talking about would be in the back of the building?

A. It would be to the side of the Seven Eleven store.

Q. All right.

And that's the back where the building fronts, the side of the Seven Eleven?

A. The Seven Eleven store doesn't face Wilson Boulevard.

Q. Maybe you better come down and draw it so everybody knows what we're talking about.

All right.

Now draw the front of the building.

A. From the front of the—

Q. (Interposing) From the front of the shopping center.

Charles Taylor

That's the front. Where would Wilson Boulevard be?

O. K.

Draw a little road there.

That's Wilson Boulevard?

A. Right.

Q. This is the front of the building?

A. Right.

Q. Now draw in the Seven Eleven store.

page 1351 } All right.

Now, which way does Seven Eleven store face? Put a little arrow there.

Now draw the back of the building of the shopping center.

All right.

Now you say the Seven Eleven only comes half way back?

A. I don't know whether it's half way back. As well as I remember, there's a small area back here that doesn't continue the length or depth of the building.

Q. Doesn't the Seven Eleven come all the way back?

The Court: I don't think all the Jury can see.

By Mr. Harrigan:

Q. Where is the brick wall?

A. To what?

Q. That leads up to the building?

A. I don't recall any brick wall at this end of the building.

There may be but I don't recall it.

Q. You don't recall that?

A. The way we went to the roof of the Seven Eleven store is to put a ladder here and that runs to the rest of the building.

page 1352 } Q. Isn't there a wall that runs here to the edge of the building?

A. I can't recall.

Q. Have you got any pictures at all of that side of the building?

A. No, I don't.

Q. And you don't know if there's any trees--well, do you know if this drawing is accurate that you drew here?

A. No, I don't.

Q. All right.

Next I would ask you--maybe this would help, Commonwealth's Exhibit 18A.

That's a view looking down towards Seven Eleven store?

Charles Taylor

A. Yes, it is.

Q. Can you tell if the roof of Seven Eleven runs the whole length of the building?

A. No, I cannot.

Q. You can't.

All right.

Now, what date was 18B taken?

A. They were taken on the 26th.

Q. And 18C?

page 1353 } A. Also the 26th.

Q. 18D?

A. 26th.

Q. 18E?

A. 26th.

Q. Are all the pictures marked 18A through, I believe it's through J, were they all taken on the 26th?

A. Yes sir.

Q. All right.

Now, directing your attention to picture 18E, do you know if that wall looked that same way on the 25th or don't you know?

A. I don't know.

Q. Directing your attention to picture of—well, you better explain what this picture is. Tell the Jury what that picture is.

Mr. Hassan: What number is that?

The Witness: It would be my picture, number 4, a close view of the right rear building, just below the top rear wall, showing the light cable and the fresh tar marks and the cable line.

By Mr. Harrigan:

Q. How do you tell tar is fresh?

page 1354 } A. I'm not an expert on this but after tar is set for awhile it has a natural appearance to it and this was quite shiny.

Q. How long does it have to set before it's not shiny?

A. I have no idea.

Q. So that's your opinion?

A. That's my conclusion, yes sir.

Q. Do you know whether those tar marks were there on the 25th?

A. No, I do not.

Charles Taylor

Q. You don't know whether kids had gone up there and down that roof either?

A. No, I do not.

Q. Now, 18D, is that the photo of the same area?

A. It is.

Q. Now, do you know whether that photo accurately represents what that area looked like on the 25th?

A. No, I do not.

Q. Now, there were police officers all over that building during the 25th?

A. Not on the roof, no.

Q. You were the only one up there?

A. No sir.

page 1355 } Q. Now, this picture here of a beer can which is 18C, what does that purport to show?

A. This is all fresh tar. It appeared to be water but it's fresh tar and this is the corner of the building above 6029.

Q. There wasn't any water on that part of the roof?

A. Not where there's a hideaway there, there's none there.

Q. Now, is there any reason why you didn't take a picture of the other side of the building?

A. No sir.

Q. Now, you see this picture 18H. There's a wall there that leads right up to the building, isn't there?

A. Yes sir.

Q. You don't recognize a similar wall leading up to the other side?

A. No, I don't.

Q. Now, do you know how many people that are officers or attorneys or children or anybody else that was up on that roof between the 25th and the time you took these pictures on the 26th?

A. While I was there, there were only three people on the roof. After we left, I have no idea who was up
page 1356 } there.

Q. On the 25th, what time did you leave?

A. I would say 3:00 o'clock in the afternoon.

Q. Were you the last one off the roof?

A. I was not.

Q. Who else was up there?

A. I believe another officer was still up on the roof.

Q. What time did you go back to the roof on the 26th?

A. I believe it was 10:00 o'clock that morning.

Q. What time did you leave—did you leave?

Charles Taylor

A. Yes sir. We left about 10:00 o'clock. Shortly after that, we drove up to the roof.

Q. So you got there sometime after 10:00?

A. That's correct.

Q. What time did you get there?

A. I don't know the exact time.

Q. What time did you leave?

A. I wouldn't want to say that either.

Q. Now, you took some pictures of the shopping center, one of them being 17D, was that just part of the crowd that was there?

A. Yes it was.

Q. And here is another, 17G, is that a fair representation of how many people were hanging around at page 1357 } that time?

A. I believe some of the people had left by then. When I first arrived, there were quite a few people there.

Q. And 17H, that shows a lot of kids and other people, spectators?

A. That's right.

Q. Do you know if any photographers went up to take pictures of that roof, the press or anything?

A. One photographer did.

Q. Other than the Police Department?

A. Yes.

Q. Who was he?

A. Mr. Lewis of the Sun.

Q. After he left, do you know how many went up, if any?

A. I don't know if anyone else or how many others.

Q. Now, showing you picture 17E, there's an officer here, what's his name?

A. I couldn't tell you. He's one of the newer men of the Department. I don't know his name.

Q. You don't know his name?

A. No sir.

Q. Now, who directed you as to what pictures you should take or did you make that decision yourself?

A. I made the decision myself.

page 1358 } I was told to just cover it as best I could.

Q. Who told you that?

A. Sergeant Kodel. He was on the scene when I arrived.

Q. His instruction was to cover it as best you could?

A. Yes sir.

Charles Taylor

Q. Now you took—you lifted some footprints, is that right?

A. That's right.

Q. And there was about six that you took?

A. That's correct.

Q. And, as I understand your testimony, they tend to show the same individual walking and there were six prints where he had been walking?

A. There were a number of prints along the wall but I took the best ones, the ones that lifted the best.

Q. So you took the six you thought would lift the best?

A. Yes.

Q. And you didn't take any others?

A. No sir.

Q. And those were along where?

A. The fire wall, not much more than a foot wide.

Q. Did you take pictures of them?

A. No, I did not.

page 1359 } Q. Why not?

A. They were so faint I didn't think they would show up in the picture.

Q. They were that faint?

A. Yes they were.

Q. Now, I show you Commonwealth's Exhibit 18A, where we're talking about a fire wall. What are you talking about?

A. These walls were separating between each store.

Q. Now, were the prints right on top of this wall?

A. No, not on a particular wall but on top of one of those walls with the tin covering.

Q. How wide is that wall?

A. Guessing, no more than eighteen inches.

Q. So there's plenty of room for somebody to walk?

A. Right.

Q. All right.

A. They went in both directions.

Q. That would be from the back to the front and from the

Now, which direction were those footprints headed?
front to the back?

A. Right.

Q. Did they have any particular design that was noticeable to you?

page 1360 } A. A small checked pattern to them.

Q. That's in the heel wasn't it?

A. I don't know whether it was in the heel, it was just in

Charles Taylor

the shoe, no particular part of it. Like I say, it didn't show up.

Q. How about the front part of the shoe?

A. I believe it was the same pattern throughout the shoe.

Q. A small check?

A. Right.

Q. A very distinguishable check, is that right?

A. Yes.

Q. Now did you see what—let me ask you this:

Now these prints you say were going both ways, to the back of the building, right?

A. Right.

Q. (Continuing) And to the front?

A. Right.

Q. Were any overlapping any others so you could tell which way individual went first?

A. No, you couldn't.

Q. You couldn't tell that. All right.

Now, the ones that went to the back of the
page 1362 } building, led toward the back of the building,
did they just disappear or what happened to
those?

A. They went all the way to the rear of the building.

Q. And that's it?

A. To the end of the wall, yes sir.

Q. Now, that's almost to the center of the building?

A. Yes, it would be closer to the Seven Eleven.

Q. Now, the ones that came from the back of the building, how far up did they go?

A. All the way to the front of the building.

Q. Now, all the way to the front of the building would be all the way to the front of which side or near which area?

A. It would be—there was a wall to the west side of 6029 and there would be a wall separating 6021 from 6029 and the next building west or closest to the Seven Eleven store and it went directly to the front of the building right to the front wall.

Q. Now, did you look at the other fire walls to see if there was any walking on those?

A. Not all of them. I looked at the one closest to 6029.

Q. And those you lifted—

A. (Interposing) They were the best. Some
page 1363 } of them were overlapping from—there were one
going forward to the front and then to the rear

Charles Taylor

overlapping and I picked the best single ones I could locate.

Q. Did you run a test on those footprints with these shoes?

A. No, I did not.

Q. Let me show you these shoes.

Is there any checks on the bottom of those shoes?

Mr. Hassan: I'm going to object. The shoes speak for themselves. He hasn't qualified this man as an expert.

Mr. Harrigan: All right.

I take it that objection was sustained.

The Court: No. As a matter of fact, it wasn't.

Mr. Harrigan: All right. Then I'll ask it again.

The Court: I was wondering if you were going to add to the question.

Mr. Harrigan: All right.

By Mr. Harrigan:

Q. Were any checks on the bottom of those shoes that resembled that print?

A. No, there are not.

Q. Now, you said that you had dusted for finger prints, is that right?

page 1364 } A. That's right.

Q. And just what area did you dust for finger prints?

A. Directly above 6029 there's a sign. I dusted the sign between the metal covering over the brick wall.

Q. Did you find any finger prints?

A. No, I did not.

Q. Did you dust any where else?

A. No, I did not.

Q. How about up by the Seven Eleven?

A. No other place other than just above 6029.

Q. A guy can get up and down from Seven Eleven rather easily, can't he. Did you look there—

Mr. Hassan: If Your Honor please, he answered this about three times and said you couldn't reach the roof except by a ladder up the side of the Seven Eleven.

The Court: That is repetitious.

By Mr. Harrigan:

Q. Did you dust for finger prints over by the Goodwill side?

Charles Taylor

A. No, I did not.

The Court: I think he testified he dusted only that one place and didn't find any.

Mr. Harrigan: All right.

page 1365 } By Mr. Harrigan:

Q. Now, just so I'm sure:

You didn't find any finger prints belonging to anybody else either, did you?

A. I did not.

Q. And after the 26th—let me ask you this:

Was anybody helping you at any time collecting this particular evidence?

A. Not actually collecting the evidence. There was someone along with me but I did the actual collection of the evidence, photographs and so on.

Q. Now, after you left up there on the 26th, when was the next time you went back?

A. The following Monday. I don't recall the exact date. I collected the earth samples.

Q. The 30th?

A. The 30th, that's right.

Q. Now, August the 30th was a Monday.

A. I believe it was a Monday, I'm not sure.

Q. The 25th was a Friday.

A. It wouldn't have been a Monday either.

Q. What day was it, Tuesday?

A. Wednesday, I believe, wasn't it?

page 1366 } Q. At least it was five days after the 25th?

A. Yes sir, it was on the 30th.

Q. All right.

Now, had it rained between the 25th and the 30th?

A. I don't recall.

Q. All right.

Now, you said that you collected certain samples from various locations of rock and what have you, is that right?

A. That's right.

Q. Somebody was helping you collect those?

A. No sir. Someone was with me but I did the actual collection.

Q. All right.

Now, describe for us if you would the terrain from the shopping center down Liberty Street where you were picking

Charles Taylor

this stuff up down towards the park, is it level or all downhill or is it uphill?

A. To the best of my knowledge, it's downhill from the rear of the shopping center down to Arlington Mill Drive, a slight grade downhill all the way.

Q. So rain could wash gravel all the way down the whole road?

page 1367 } A. On the curb and gutters there I imagine it would drain to the sewers.

Q. Now, who—did you determine periodically where to stop and scoop up a box of gravel?

A. Through most of that neighborhood there are sidewalks with gutters and lawns and there wasn't many places where the earth was bare and the earth was there and the catch basin and the location itself at the rear of the gate, there was a worn place in the sod.

Q. I see.

So these places where you selected this gravel then was where it had settled or where there was some gravel?

A. Correct.

Q. And most of the other area was either lawn or sidewalk or some other substance?

A. Curbs and gutters, right.

The Court: Mr. Harrigan, if you're going to need a substantial time to complete your cross examination of the witness, I'll break for lunch now. If you're near the end, I'll hold on through it.

Mr. Harrigan: I would just as soon break.

The Court: All right.

Let the Jury retire for lunch and we'll see you
page 1368 } at a quarter of two.

(Whereupon, at 12:45 p. m., the hearing was recessed, to reconvene at 1:45 p. m.)

page 1370 } AFTERNOON SESSION
(2:20 p. m.)

The Court: Will you call Officer Taylor and the Jury?
Mr. Harrigan, you were cross examining.

Charles Taylor

Whereupon, CHARLES TAYLOR, resumed the stand, having been previously sworn, was further examined and testified as follows:

CROSS EXAMINATION (resumed)

By Mr. Harrigan:

Q. Now, I show you Exhibit No. 41, you said that you took that out of a car?

A. That's right.

Q. When was that?

A. That would be on the 25th, 5:30 in the evening. I'm sorry, 3:30 in the evening on the 25th.

Q. Where was the car?

A. In the paint shop in the County Property Yard.

Q. Anybody else down there at that time?

A. No sir, there wasn't.

Q. Did you find anything else in the car?

A. No sir, I did not.

Q. Did you find—there were no other scrapes
page 1371 } of metal of any sort?

A. No, I didn't see any.

Q. Now you didn't mark this exhibit at all when you took it out did you?

A. No, I did not.

Q. What kind of a car was that you took it from?

A. A Chevrolet.

Q. Now, can you identify that as the object that you took or—

A. (Interposing) No, I cannot.

Q. Now, did you do anything else or make any other tests that you haven't testified about?

A. No sir.

Q. Was there anyone else working with you in I. D. during the course of this investigation that did anything?

A. Yes there was.

Q. Who?

A. Sergeant Schoup.

Q. Was he taking pictures mostly?

A. He took pictures, yes.

Q. Did he take any pictures of that footprint?

A. No sir, he did not.

Q. Now, on the back of the shopping center
page 1372 } where this railing was, the roof separator, was

Charles Taylor

where the footprint was running to the back and to the front, are there trees back there?

A. Yes there are.

Q. And do the trees come up to the roof?

A. Yes they do.

Q. And do the branches extend over the roof?

A. I believe they do in one place, yes.

Q. Did you at any time go in back of the shopping center at the bottom of any of those trees and look for footprints?

A. I did but I didn't find any.

Q. Was the ground hard or soft?

A. Soft.

Q. Was there a lawn there?

A. Yes there was.

Q. And grass?

A. Grass and some bare spots, and flower beds.

Q. Did you take any sampling of dirt from that area?

A. No sir, I did not.

Q. Now, how many trees, if you know, come up to the back of the shopping center all along the back?

A. I would have no idea.

Q. Does that mean more than one?

page 1373 } A. More than one, yes.

Q. Are they all along the back there?

A. I believe so, yes. Some of the yards were quite heavy with trees and shrubbery.

Q. Did many of them extend over the back of the roof?

A. I don't recall.

Q. Did you get your pants wet when you were up on the roof?

A. I did not.

Q. Were you all over the roof?

A. I was.

Mr. Harrigan: That's all.

The Court: Any further questions, Mr. Hassan?

Mr. Hassan: Yes, I do have some, Your Honor.

REDIRECT EXAMINATION

By Mr. Hassan:

Q. Now, when you went up on the roof at I believe you said 2:30, who was on the roof?

A. Officer Roof.

Charles Taylor

Q. And was anyone else on the roof?

A. No sir.

Q. Now, you told Mr. Harrigan there was some other people on the roof, was that before or after you
page 1374 } looked at the prints?

A. Afterwards.

Q. After you looked at the prints?

A. That's right.

Q. Now, were you able to ascertain whether the prints that you lifted were all from the same individual?

A. No I did not.

Q. And did you mean to indicate that they were the stride of one individual?

A. Yes sir, they appeared to be.

Q. They appeared to be the stride of one individual?

A. Yes sir.

Q. In both directions?

A. In both directions.

Q. Now, when you took the fragment from the top of the car, did you examine the car for any other fragment or slugs?

A. Yes I did.

Q. And what type of examination did you make?

A. Just by sight. Just checking over the interior of the area of the car, the interior.

Q. Did you remove any seats or anything of that kind?

A. No I did not.

Q. Do you know whether or not there was a
page 1375 } subsequent examination of that car?

A. Yes.

Q. Who did that?

A. Sergeant Schoup and Detective Bushman.

Q. Were you present at that time?

A. I was not.

Mr. Harrigan: A move to strike on the ground of no first hand knowledge.

The Court: The objection is over ruled.

Mr. Harrigan: Exception.

By Mr. Hassan:

Q. How many people from the I. D. Bureau, to your knowledge, took pictures in this case?

A. Two.

Q. What two?

John Kodel

A. Myself and Sergeant Schoup.

Q. Is there a Mr. Alexander?

A. Yes there is.

Q. And do you know whether or not he took any pictures?

A. No, he did not.

Q. Now, did there come a time when you measured the depth of any water on that roof?

A. No, I did not.

page 1376 } Q. Did you walk in any water on that roof?

A. Yes sir, I did.

Q. Now, with reference to the roof on the east side of the fire wall where you found the footprints, did you walk in that water?

A. Yes sir, I did.

Q. How deep was that?

A. I would say it varied from anywhere from an inch to as much as six inches in places.

Q. To the west of that fire wall, did you walk on that?

A. Yes I did.

Q. How deep was that water?

A. About the same over the entire shopping center.

Q. About the same over the entire shopping center?

A. Yes sir.

Q. Did you walk in the water on the roof on each side?

A. Yes sir, I did.

Q. Why didn't you get your feet or pants wet?

A. I wore hip boots.

Mr. Hassan: No further questions.

The Court: May the witness be excused?

Mr. Harrigan: I don't think I have any questions.

The Court: May he be excused?

page 1377 } Mr. Hassan: He may be excused.

The Court: Officer Taylor, you're excused.

Mr. Hassan: John Kodel, please.

Whereupon, JOHN KODEL, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your occupation?

John Kodel

A. John P. Kodel, Arlington County Police, Lieutenant.

Q. Now, directing your attention to on or about the 25th day of August 1967, did there come a time when you responded to the six thousand block of Wilson Boulevard?

A. Yes I did.

Q. What time of the day or night was that?

A. Approximately—well, it was when I went on the road, sir, 2:00 o'clock shift.

Q. 2:00 o'clock shift?

A. Yes.

Q. When you arrived at the six thousand block, what did you see if anything?

page 1378 } A. Quite a few people congregated in the shopping center area.

Q. What did you do, if anything?

A. I proceeded to the area. We were in the preparation of forming a search party.

Q. And did there come a time when you did form a search party?

A. Yes. About 4:00 o'clock I received a call to call a phone number which I had done and this call came from a Mrs. Freeman.

Q. At the time you received this message, what did you do?

A. I proceeded to the area and rounded up men to form a search party.

Q. And did there come a time when you did round up a search party?

A. Yes sir.

Q. More than one?

A. Yes sir.

Q. More than one search party?

A. Yes.

Q. How many search parties?

A. I only rounded up one search party.

page 1379 } Q. How many men did you round up for that search party?

A. Five men and then two military men.

Q. Who were the police officers that you rounded up?

A. It was Tom Blake, Officer Nethers, Officer Blinky, Alan Payton, and myself. The two military men—

Q. (Interposing) Now, do you know their names?

A. No, I do not.

Q. What time did they join up with you?

John Kodel

A. It was quite a bit later when they showed up. I would judge that they didn't get there until 5:30 or 6:00 o'clock.

Q. Had you started this search before you received the phone call from Mrs. Freeman?

A. We were proceeding to the area and getting men off on details. At this time of day you have quite a few details to cover.

Q. What do you mean by details?

A. Traffic details and assignments with the motor squad.

Q. And these individuals you rounded up were in the motor squad?

A. Right.

Q. You're in charge of the motor squad?

A. Yes sir.

page 1380 } Q. When you received this call from Mrs. Freeman, what did you do?

A. I went to her home.

Q. When you went there, what did you see?

A. As I went up and knocked on the door, I noticed the coat and hat laying in her yard.

Q. And then what did you do?

A. Knocked on her door and she met me there.

Q. Then what did you do?

A. She told me at this time she had found the coat and hat in her yard.

Mr. Harrigan: I object to what she told him.

Mr. Hassan: The question was what did he do and he did not respond to it.

The Court: Go ahead, sir. What did you do?

The Witness: I took the coat and hat in my possession.

By Mr. Hassan:

Q. What did you do with it?

A. Placed them back in the same spot where she showed me she found them.

Q. Did there come a time when that was photographed?

A. Yes sir.

Q. And then after it was photographed, what did you do?

A. Formed the search party to search the
page 1381 } yard immediately in the area of the coat and hat.

Q. And was such a search conducted?

A. Yes sir.

John Kodel

Q. Did it discover anything else?

A. No sir.

Q. What were they searching for?

A. Searching for a gun.

Q. Now, did there come a time when you did anything with the hat and coat?

A. Yes sir.

Q. What did you do with it?

A. Brought the hat and coat to the station.

Q. And did you mark the hat and coat in any way?

A. I tagged it, yes sir.

Q. What did you then do with it?

A. Turned it into the police counter.

Q. Do you know what time that was?

A. About 7:00 o'clock, I believe, sir.

Mr. Hassan: I would like to have Property No. 23876.

The Court: Mr. Hassan, in case anybody on the Jury is confused, you might establish the connection of this man with Detective Walter Kodel.

page 1382 } Mr. Hassan: He's Walter Kodel's twin brother, and in civilian clothes everybody confuses them.

He's Lieutenant Kodel and the other is Sergeant Kodel.

By Mr. Hassan:

Q. I'll ask you to look at those, sir, and tell me whether or not those are the items you have been testifying about?

A. May I remove them from the bag?

The Court: Yes sir.

By Mr. Hassan:

Q. Is this the tag you put on it?

A. That's the tag I tagged it with in my own handwriting.

Mr. Hassan: I would like to have this marked for Commonwealth's Exhibit No. 42 for identification.

(Whereupon, Commonwealth's Exhibit No. 42 was marked for identification.)

By Mr. Hassan:

Q. Will you examine the other one?

John Kodel

Mr. Hassan: I offer this in evidence, Your Honor.

The Court: Any objection?

Mr. Harrigan: Yes, Your Honor.

The Court: The objection is sustained.

page 1383 } I'll be consistent with the ruling I made with
respect to the photographs of these items. They
won't be received unless some connection with the defendant
is shown.

By Mr. Hassan:

Q. Are you able to identify this?

A. Yes I am.

Q. And what is that?

A. This is a reversible raincoat found at the same location
as the hat. At the time I found it the one sleeve was inside
out, either way you look at it.

Q. Did you tag that?

A. Yes I did with my own handwriting.

Q. What did you do with it after you tagged it?

A. I turned it in at the police counter.

Mr. Hassan: I'd like to have this marked Commonwealth's
Exhibit 43 for identification.

(Whereupon, Commonwealth's Exhibit No. 43 was marked
for identification.)

Mr. Hassan: I would like to offer this in evidence, Your
Honor.

The Court: Same objection?

Mr. Harrigan: Same objection, Your Honor.

page 1384 } The Court: Objection is sustained.

By Mr. Hassan:

Q. Now, I would like to show you Commonwealth's Exhibit
No. 10A and ask you, sir, whether or not you recognize that?

A. Yes, I do.

Q. And what is it?

A. This is the yard where the coat and hat were found by
Mrs. Freeman.

Q. And I'd like to show you Commonwealth's Exhibit 10B
and ask you whether or not you recognize that?

A. This is the location that the hat and coat were found

John Kodel

and the position they were found in as it was told to me by Mrs. Freeman or showed to me by Mrs. Freeman.

Q. And I show you Commonwealth's 10C and ask you if you recognize that?

A. Yes sir. This is where the coat and hat were found by myself.

Q. Are you sure that's Walter and not John? (pointing to photograph)

A. I'm positive.

Q. Now, I'd like to show you Commonwealth's Exhibit No. 10D for identification and ask you whether or not you can tell us what that is?

page 1385 } A. That is myself pointing to the coat and hat located under the shrubbery or bush where Mrs. Freeman showed me the coat and hat were found.

Mr. Hassan: I would like to offer this in evidence.

The Court: That was not offered previously?

Mr. Hassan: It was just for identification previously.

The Court: Is there objection?

Mr. Harrigan: Yes, Your Honor.

The Court: Well, the objection is over ruled on the same basis, as the other photographs were admitted conditionally and I will admit this conditionally, too, subject to its being connected up by testimony.

Here again, ladies and gentlemen, this photograph is admitted as were the others showing the hat and coat with the requirement that Commonwealth subsequently is able to designate some connection between the hat and the coat with the defendant and, if not, it will be stricken out of evidence.

You are to bear that in mind.

For the purpose of continuity I will let it in conditionally.

page 1386 } (Whereupon, Commonwealth's Exhibits No. 10A, B, C, and D were entered into evidence, conditionally)

Mr. Harrigan: Exception.

By Mr. Hassan:

Q. I show you 10E for identification and ask you if you know what that is?

A. Yes sir.

John Kodel

I'm holding the coat and hat up for the photograph to be taken by our I.D. people.

Q. And I show you Commonwealth's Exhibit 10F for identification and ask you about that one, sir?

A. This is the same photo only from a different angle.

Mr. Hassan: I would like to offer 10F and 10E, Your Honor.

Mr. Harrigan: I would object to the conditional ground on the ground that this coat, as I understand it, has two sides to it, one of them is light and one of them is dark and these pictures here seem to me to be an obvious attempt to photograph the dark side only which would be an obvious attempt to put in evidence a picture of the coat which may be consistent with some of their other evidence.

Mr. Hassan: If Your Honor please, I would like to be heard on that also.

page 1387 } This is a photograph, a picture, as it was found by Lieutenant Kodel as he testified to it, showing one arm out black and the other picture shows one arm black and not out, and that's the picture of the coat, one with the arm in and one with the arm out. That's exactly how it was found.

Mr. Harrigan: According to these pictures, it doesn't appear that way to me. The light side seems to be the side that was out when it was found and I don't think the way Sergeant Kodel found it will necessarily have any probative value at all since it was obviously handled long before he got there.

Mr. Hassan: And the testimony that it was handled was previously offered.

The Court: I don't recall whether Mrs. Freeman testified that one arm was in and one was out or not.

Mr. Hassan: She said she picked it up and laid it down and called the police and then Lieutenant Kodel came and she showed him where to put it down.

The Court: Lieutenant, these pictures I now show you, 10F and 10E for identification, this shows the coat and hat in the condition you found them?

The Witness: Yes sir.

page 1388 } The Court: And then they were rearranged were they to put them under the bush in the condition that Mrs. Freeman said she found them as it is in these photographs.

John Kodel

The Witness: I didn't give any thought to the color until this just came up so I couldn't say.

The Court: But the location of them was as pointed out to you.

The Witness: Correct. Only thing I did notice was one sleeve was different from the other where it had been left as it was taken off.

Mr. Harrigan: I object to these conclusions. He doesn't know it was left there when taken off or had been there for a week.

The Court: I think the objection should be sustained unless there is some evidence to show how they were found and this leaves us to draw a conclusion.

So I sustain the objection to 10F and 10E.

Mr. Hassan: Exception, if Your Honor please.

By Mr. Hassan:

Q. Now, this crew that you called in for searching, where did they search?

A. Well, my instructions was that they were to start immediately searching the yard where the coat was found and the house on each side of it and then the houses
page 1389 } below it which would be Liberty Street with a
dead end at the park, the north end of the park.

My worry was that a gun had been discarded here and some child would get it.

Mr. Harrigan: I object to his worries.

The Court: The objection is sustained.

I think it's all right for him to explain what he was doing.

By Mr. Hassan:

Q. Did there come a time when you went into the park?

A. Yes sir.

Q. What areas of the park did you search?

A. They searched the park on the north end over next to the stream. Officer Blake, Tom Blake was with the two—when the military men showed up—we didn't get into the park until they showed up.

There's a row of houses on Larrimore Street that backs up towards the park. There's also several houses behind them that face the park on what is known as Arlington Mill Drive.

It wasn't necessary to search these houses on Larrimore

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Patler v. Commonwealth of Virginia,
Volume 3

JOHN PATLER

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ARLINGTON COUNTY

RULE 5:12--BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, CLERK

John Kodel

Street and also those backed up to them which meant we were searching only two yards.

page 1390 } Q. You searched the yards on Arlington Mill Drive and Larrimore in the vicinity where the coat and hat were found?

A. Right.

Q. When you got to the park, what area did you search?

A. Over as far as the stream is as far as I have knowledge of.

Q. Your group searched over to the stream?

A. Right.

Q. What stream are you talking about?

A. The stream running through Bon Air Park, Four Mile Run.

Q. Did you search the park area on the other side of Four Mile Run?

A. Not to my knowledge. My team did not. Now, they may have spread out some.

Q. You searched the football field?

A. I didn't, no.

Q. Your crew under you searched the football field.

Did they get into the rose garden?

A. I can't say that.

Q. Did they get into the playground area where the merry-go-round was?

A. I can't answer that.

page 1391 } Q. Did they get into the area where the foot-bridge was?

A. I can't answer that.

Q. Was any other group searching?

A. There were other men in the park but not as a group. They were there as individual policemen.

Q. Were they under your control?

A. No sir.

Q. Whose control were they under?

A. There were two shifts on the road plus the detective crew. They were the evening shift which was controlled at this time—I don't know who the supervisor was. And the detective shift was on the road and I don't know who their supervisor was. And the detective shift was on the road and I don't know who their supervisor was.

Q. Were they in Bon Air Park?

A. Some of them were, yes.

Q. Will you tell the names of those who were?

John Kodel

A. I cannot. I don't recall.

Q. Did the men working under your supervision find anything?

A. No.

Q. And what time did the search end?

A. Approximately six—well a little before seven we were summoned to the station for a critique.

page 1392 } Q. For what?

A. A critique, to go over what we were actually working on.

Q. All right.

Now, were you present when the military men used the mine detectors?

A. No.

Q. You were not.

Now, on the next day did you conduct any kind of search?

A. No sir.

Q. Was that the last time you worked on the search?

A. Right.

Q. And where did your search start?

A. As far as my knowledge at Four Mile Run from the stem of Larrimore Street to Four Mile Run and it was high with water from the storm of the night before and my men were instructed to search the area until called back.

Officer Blake was assigned with the military people with the mine detector.

Mr. Hassen: I have no further questions.

CROSS EXAMINATION

By Mr. Harrigan:

page 1393 } Q. Now, Lieutenant Kodel, you were up at the shopping center earlier in the day weren't you?

A. Right.

Q. What time did you arrive up there?

A. Well, actually I was up there approximately ten minutes after twelve or fifteen minutes after twelve on my way to work.

Q. Did you just stop on your way to work?

A. Right.

Q. You were dressed in uniform?

A. Right.

Q. Was Sergeant Kodel there when you arrived?

John Kodel

A. Yes sir.

Q. He was?

A. Yes sir.

Q. So you got there sometime after he did?

A. Right.

Q. Now, what other officers were up there when you arrived, or detectives?

A. I don't recall. There were several riding the area but I was only at the scene and Sergeant Kodel was the only one I recall being there.

Q. All right.

page 1394 } Q. Now, how long did you stay at the scene?

A. I would judge about, not over forty-five minutes because I had to report in here at 1:00 o'clock to prepare for going on the road with my shift.

Q. All right.

So you were up there from about sometime after 12:10 or 12:15 until shortly before work?

A. Yes. It could have been a little later than that when I got there. I wasn't paying too much attention to the time.

Q. It could have been later than that. Could have been 12:20?

A. Yes. It could have been 12:25 or 12:30.

Q. Now, did you hear a description come out on any particular suspect?

A. No sir.

Q. You didn't hear any at all?

A. No. I had no radio.

Q. And after you left the scene, you came where? Right straight to the Police Headquarters?

A. Right.

Q. And you drive a police cruiser or a motorcycle?

A. A police cruiser.

page 1395 } Q. Now, after you arrived at Police Headquarters, about what time was that?

A. Approximately 1:00 o'clock.

Q. I see.

And how long did you stay down here at Police Headquarters?

A. Well, we prepared roll call and had finished, I guess, we usually finish within the twenty minutes which is allocated for roll call, which would put us on the road at 2:00 o'clock.

Q. Were some of the officers coming in to go off duty at that time?

John Kodel

A. No sir.

Q. What is roll call?

A. The two to ten shift work the night shift for traffic. The seven to three shift which is motorcycles work until 3:00 o'clock so you have an overlap of one hour in the afternoon.

Q. All right.

Were you at all involved in setting up the security measures around the police station?

A. Yes I was.

Q. You were?

page 1396 } A. (nodding affirmative)

Q. Were officers on the roof, do you know?

A. To my knowledge, no. I was assigned to clear the corridor on the main floor of the Police Department and this is what I did.

Q. Were you in charge of anyone else involved in that?

A. No.

Q. Now, did you at any time go back over in the area to look for any additional suspects?

A. No.

Q. To your knowledge, did anyone else?

A. No.

Q. All right.

Now, showing you a picture, 17G, were you still at the scene when that was taken, isn't that right?

A. Yes. In fact, you can see me right there.

Q. Now, when you—did you organize this initial search party?

A. The one that I testified to, yes sir.

Q. Now, at that time that you started to organize that you had not received a call from Mrs. Freeman, had you?

A. Yes.

Q. You had?

page 1397 } A. Oh yes.

Q. What time did that call come in?

A. It came in by telephone and I guess I must have received it about 4:15 because I tagged the coat and hat at 4:30. So it would have been about as close as I could figure it, I would have tagged it at the time I took it in possession.

Q. So it's close to 4:30 that you arrived there and tagged it, is that right?

A. Um hmm.

John Kodel

Q. Now this search party that you had formed, what kind of a gun were you looking for? Did you know?

A. No. Actually no.

I had never to this point or to the time I'm sitting right here have ever heard a lookout for any suspect or any particular gun. We were looking for any gun we would find that might be in that area.

Q. And any suspect you could find?

A. What?

Q. And any suspect?

A. If we had found a suspect, we would have brought him in.

Q. Were you looking for rifles, too, at that point?

A. Any gun.

page 1398 } Q. Any gun at all?

A. Right.

Q. Now, when you started these men searching, how far down in the park did you get? Did you go beyond the railroad?

A. The stream which is on one, on the beginning of the park, so the same side of the railroad track is where the coat and hat were found.

Q. All right.

A. (Continuing) And then over to the stream through the park side of the railroad track.

Q. Did you cross over the railroad track?

A. I did not. I did not go into the park at all myself. I was on Larrimore Street and in the yard and backing up to Arlington Mill Drive and out Arlington Mill Drive down to the bicycle trail which runs along the edge of the park. This is as far as I went.

Q. Who did you send in the park?

A. The motorman I mentioned, testified to.

Q. Who would that be?

A. Tom Blake and the military men and Officer Blake and others, Blinky—well, myself, as far as the bicycle trail.

Q. Now, as to how far they searched down in
page 1399 } there, you have no idea?

A. No.

Q. Now, did you ever see any drawing of any gun?

A. No.

Q. Your brother didn't show you one?

A. No. In fact, he wouldn't even talk to me.

Q. He wouldn't even talk to you?

Thomas A. Blake

A. No sir.

Q. You're friends aren't you?

A. Sure.

Q. All right.

Did any of your search party or men have any description of any suspect that they were also told to keep their eyes out for to your knowledge?

A. Not to my knowledge.

Q. That's all.

Let me ask you one more question.

Do you know this policeman's name (referring to photograph)?

A. We've got so many new ones. No, I can't say I do. It's too far away. I might not know him if he was right here.

Mr. Harrigan: No further questions.

The Court: May the witness be excused?

page 1400 }

Mr. Hassan: Yes he may, Your Honor.

Officer Blake, please.

Whereupon, THOMAS A. BLAKE, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Thomas A. Blake, motorcycle patrolman, Arlington County Police Department.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when you responded to the vicinity of Bon Air Park and Larrimore Street, Arlington Mill Drive?

A. There did.

Q. And who was your supervisor at that location?

A. Lieutenant John Kodel.

Q. What time did you arrive there?

A. Well, the time exactly I don't recall. It was 5:30 or 6:00 o'clock, somewhere in that area.

page 1401 }

Q. What time did you go on duty that day?

A. 1:00 o'clock in the afternoon.

Thomas A. Blake

Q. Prior to 5:30 what had been the nature of your duties that afternoon?

A. I was assigned to the area of the shopping center in the Dominion Hills area.

Q. What duties were you to perform?

A. I was to direct traffic and control the crowd of on-lookers.

Q. When you responded to Larrimore Drive and Bon Air Park, what was your duties there?

A. To search the area.

Q. Did there come a time when you conducted a search?

A. Yes we did.

Q. When you say "we", who do you mean?

A. There was myself and Lieutenant Kodel was there and Officer Alexander was there with the I. D. truck. I don't recall now—Officer Nethers, I believe. There might have been another one.

Q. What were you searching for?

A. Searching for a weapon which was supposedly discarded and any other physical evidence which we could find during the route from the home where the coat
page 1402 } and hat were found, in that area of homes.

Q. Now, did there come a time when you conducted a search with the assistance of some military personnel?

A. Yes, there did.

Q. Who were they?

A. Two specialists from the Army came from Fort Belvoir. They put in a call for a metal detector.

Q. Did there come a time when they made a test with the detector in which you participated?

A. Yes sir, they did.

Q. What was the nature of that test?

A. We had been searching in a deep well in the creek and the—I would say approximately six feet deep—in the center of the creek, maybe deeper. I was in hip boots and we were searching for the weapon. At that time I asked the soldier approximately the range of this detector. He said twelve to fifteen inches. Well, I was really surprised. So we got out of the creek and I took my pistol out of my holster and held it out in my hand like this and I had the earphones on and I had him hold the detector end of this mine sweeper, actually is what it was, what he explained to me it was. I said pull it back until I tell you to stop and it has a tone something like

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the feedback on a public address system. It sort
page 1403 } of whistles and I had him pull it back and when
I got approximately twelve to fifteen inches
away from my pistol, there was dead silence. We were no
longer picking up the pistol.

Q. Was that when you discontinued the use of the mine
detector?

A. Yes it was.

Q. And did your search result in finding anything?

A. No, we did not.

Q. How long did you search?

A. Oh—

Q. (Interposing) Altogether, with and without the mine
detector?

A. 'Til dark, just about dark.

Q. And what area did you search in personally?

A. We searched the area of the railroad bridge and along
the railroad track on both sides of the railroad track and in
the creek at the dead end of Arlington Mill Drive. This would
be the creek that goes under the railroad trestle.

Q. And you had negative results?

A. Negative results.

Q. Now, did there come a time when you resumed the search
the next day?

page 1404 } A. I was off duty on Saturday and Sunday.
Those are my regular days off and I didn't par-
ticipate in the search at all.

Mr. Hassan: I have no further questions of this witness.

CROSS EXAMINATION

By Mr. Harrigan:

Q. I'll bet you were thankful you weren't looking for mines
with that piece of equipment.

Now, did you get in the creek at all? Did you get in the
stream with it?

A. Yes I did. I put my hip boots on and climbed into the
stream.

Q. Did you go up the creek?

A. I would say maybe ten yards, fifteen yards.

Q. Then did you give them back their equipment?

A. Yes I did.

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Q. And I take it then you continued your search on foot by visual means?

A. Yes.

Q. How many guys were in that search party?

A. I don't recall exactly how many men were there. There was—

page 1405 } Q. (Interposing) Was Kodel down there in the park looking?

A. No, I don't believe he was. I can't say for certain. He had been up at the house on, I believe on Larrimore and Liberty Streets. I can't recall whether or not he came down in the woods.

Q. Now, did you search up towards the footbridge or near any footbridges?

A. No sir.

Q. Did you search up towards that way?

A. No sir.

Q. All right.

Was the search headed in the direction of Patrick Henry Drive?

A. Well, we were—the best I could describe it is that we were at the dead end of Arlington Mill Drive and there's a railroad trestle there and we searched up the railroad track from that point and I searched up the creek from that point which would be to the north away from Wilson Boulevard.

Q. Did you see anybody else down in the park, civilian type?

A. There were children there and we asked
page 1406 } the children to stay back. There were half a dozen, maybe a dozen children there that were curious as to what we were doing and we asked them to please stay on Arlington Mill Drive side of the creek until we were finished. I don't recall any adults but I do remember there were a lot of kids throwing rocks into the creek and I was wet enough so I yelled for them to stop.

Q. Did you search to the bridge?

A. On the west of the railroad tracks there was heavy overgrowth and we searched there until we got into a hornet's nest and then it was getting dark at that time and it was difficult with the shade already provided by the trees to really conduct a good search.

Q. Now, was it muddy down there around the creek?

A. Yes it was.

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Q. Did you get mud on you?

A. Well, I was in and out of the creek so I did have it on me and then I didn't. I had fire department type boots on pulled up to my hips but it was muddy around the edges. I was basically in the creek.

Q. How about the other guys, did they get muddy?

A. I do recall all of us up to that time, up until that time, I had been wearing regular police boots which are issued to us. However, they were not long enough to use
page 1407 }

I. D. wagon to go into the creek with but I did have them on when we were told we were going to search through these yards and down through the creek and the park area and, I can't say for certain, but I know that I had my boots on, my rubber boots on and I pulled my boots, leather boots off at the same time and put on these.

Q. That creek around the trestle was pretty deep, isn't it?

A. I wasn't aware how deep it was. I would say it was six—I went back—I guess about a week later.

Q. Well, you had a skin diver go down there one place, didn't you?

A. I don't know for sure.

Q. You don't know that?

A. No.

Q. All right.

As you got up stream, was it shallow?

A. Yes, it was shallow. I was able to stand in some parts but at the railroad trestle it was pretty deep.

Q. Now, at any time, were you looking for any suspects during your tour of duty?

A. No sir.

page 1408 } I came to work at 2:00 o'clock.

Q. 2:00 o'clock?

A. In the afternoon of the 25th and I was sent directly from roll call to Dominion Hills Shopping Center to relieve the day folks up there.

Q. Now, were any descriptions going on from 2:00 o'clock on to your knowledge regarding any possible suspects?

A. No. We didn't get a lookout at roll call that I recall. I can't say for sure.

Q. Would that be customary if they were looking for somebody, to give you a lookout at roll call?

A. Not necessarily. There have been times it has been delayed.

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Q. Well, in this particular event—

A. (Interposing) I parked my motorcycle. I was away from it. As far as most of the radio transmissions, I was out of ear shot. I'm not sure I had the radio on to tell you the truth. But I was out on Wilson Boulevard.

Q. Ordinarily, when something occurs at 12:00, at 2:00 o'clock when you go for roll call, do they give you a description at roll call of a suspect if they intend to detail you to that area.

A. I would say it's not a normal thing. It's page 1409 } not unusual if you don't get it right away.

Q. You would get it at the scene or later?

A. Yes, if the suspect is not located.

Q. Did you get one?

A. As I say, I was on the traffic control and away from the motorcycle and I couldn't say whether one was put on the air or not.

Mr. Harrigan: That's all.

The Court: May the witness be excused.

Mr. Harrigan: Excuse me. I have just one other question. I was trying to find somebody's name here.

By Mr. Harrigan:

Q. Do you know this man (indicating photograph)?

A. He's an Arlington County Police Officer. I don't know his name. He's one of the new boys.

Mr. Harrigan: All right. That's all

Mr. Hassan: I have no further questions.

The Court: All right.

Mr. Blake, you're excused. Thank you.

Next witness.

Mr. Hassan: Sergeant Peever.

May we have a short recess?

The Court: All right. We'll take a recess for page 1410 } about ten minutes.

(Whereupon, a short recess was taken.)

The Court: Are you ready for the Jury?

Call the Jury.

Mr. Hassan: If Your Honor please, we would like to stipu-

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late that the mysterious policeman in Commonwealth's Exhibit No. 17H is, Wayne Shortt, a recruit.

He's in school in Fairfax. If the defense wants him, we can have him here.

Whereupon, GEORGE S. PEEVER, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. George S. Peever, Detective Sergeant, Arlington County Police Department.

Q. Directing your attention to on or about the 25th day of August, 1967, what was your assignment of duty?

A. I was on duty in the Detective Bureau at page 1411 } the time.

Q. What time did you come to work that day?

A. 7:00 o'clock in the morning.

Q. Did there come a time when you were on the six thousand block of Wilson Boulevard, Arlington County, Virginia?

A. There was.

Q. What time was that?

A. I left the station about 12:25, 12:30.

Q. And when you arrived in the six thousand block of Wilson Boulevard, what did you see, if anything?

A. There was a large crowd of people, a lot of police officers around. I saw Rockwell laying on the ground. I checked with you and my captain.

Q. And did you perform any duties at the scene?

A. No. I was advised by you and Captain Weekly to go back to the station and make sure that the suspect that was picked up and on the way to the station, was handled properly. His rights were advised *et cetera*.

Q. When you arrived at the station, where was the defendant, John Patler?

A. John Patler was in the interview room, the left one by the window with the door open.

Q. And did there come a time when you talked to him at that time when you arrived?

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page 1412 } A. Yes.

Q. What did you tell him, if anything?

A. I went in there and I showed him my badge and told him who I was and told him there was nothing we could do, that we didn't want to talk to him or anything. We had to wait until the Special Justice got back at 1:30 and he would be taken across the street and advised of his rights.

Q. Did there come a time when you took him across?

A. Yes.

Q. Were you present?

A. Yes.

Q. What happened there?

A. Mr. Gannon read his rights to him and it was recorded and we asked him if he understood and asked him to sign it and he refused to sign it. Then he was allowed to make a phone call to call his wife.

Q. Then what happened?

A. We took him back across the street.

Q. Did there come a time when he was taken back across the street and you talked to him again?

A. Yes.

Q. Now, when you talked to him again, what did you tell him, if anything?

page 1413 } A. Well, I again advised him of his rights, by that, you know, we have another form called Form B and advised him of his rights, the same thing Mr. Gannon did and asked him if he wanted to tell us anything about it or discuss it and he said he didn't know what was going on.

Q. Did he ask you anything?

A. He asked me?

Q. Yes.

A. He asked me what he was charged with.

Q. What did you tell him?

A. I told him he wasn't charged with anything at that time. He was a suspect in a felony.

Q. Did there come a time when he did talk to you?

A. Well, he asked me why he was being held and I told him a felony had been committed and he was seen in the area. He was seen running when he saw Inspector Cole and he was picked up as being a suspect in a felony.

Q. Did he tell you anything else about his activity?

A. Well, his clothes were wet and when I mean wet is, his trousers were wet, his shoes were wet and everything and I

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said, you know, how come did he get wet and he said he was just out walking around and he said he had gotten mad at his wife, that he and his wife had been out shopping earlier and he had an argument with her and he left the house and just got wet walking through the grass and hitting the bushes and stuff.

page 1414 } Q. Did there come a time when he told you where he had been or had not been?

A. Well, I remember him saying they had been shopping and did different things and he went back home and after the argument he left and he didn't state that, he just said he was walking up and around the Westover area and he said he was going to make a phone call then and he started walking down Washington Boulevard and went to about three different bus stops. I remember him saying there was a woman standing at one of the bus stops and he was at about the third bus stop when the police pulled up.

Q. Did he say whether or not he had been in Dominion Hills?

A. No.

Q. Did he state whether or not he had been in Bon Air Park?

A. No.

Q. Now, how long did you talk to him?

A. Wasn't over ten or eleven minutes.

Q. Did there come a time when his counsel arrived?

A. Yes.

Q. Then what occurred, if anything?

A. She went in and talked to him, Miss Lane, and John made some phone calls or asked if he could make some phone calls. And then there was a time that we—I went with Detective Davis over to your office and had a warrant typed up and had it sworn to.

Q. And did there come a time when that warrant was served on the defendant?

A. Yes.

Q. Tell the Court and Jury what occurred at that time.

A. Detective Davis and I brought the warrant back up to the defendant and into the room where John was sitting in the presence of Mrs. Lane. The warrant was read to him and then he was taken right into the big room of the Detective Bureau on account of all the confusion and then we had him

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walk right upstairs to the Detective Bureau, all the time Mrs. Lane was with me.

Q. What occurred, if anything?

A. A kind of security arose—no, back up a minute.

His wife was called and we were awaiting for his wife to come down. Mrs. Lane asked if we could wait until his wife arrived which we did.

page 1416 } Q. After he talked with his wife, what occurred, if anything?

A. Then we made security measures, you know, to transport him across the street to the jail.

Q. Did you participate in the making of those security plans?

A. Yes.

Q. What were the security plans?

A. First he was handcuffed and I personally asked him if the handcuffs were too tight and he said one was bothering him but it was so loose I could stick my finger in between the cuff and his wrist but he said it was still pinching a little so I took the cuffs off and reversed it and I did that and he said it felt better.

We took him down the hall and into the next building where the Chief's office is and went down the steps and the wagon was backed up to the back door and John and I and Detective Davis and Mrs. Lane and Sergeant McLean rode in the wagon across the street and it was backed up again to the jail, to the door going up to the jail and he was taken down-stairs.

Q. Was any other security measures taken that you know of?

page 1417 } A. Well, there was officers standing all over the building and outside and everything.

Q. Did you have anything to do with that, the planning of that security?

A. Well, mostly it was done by Sergeant McLean and I think it was—I don't know some of the other wheels, captains or something up there.

Q. Now, after this occurred, did there come a time when you went to the scene again on that day?

A. On that day?

Q. Yes.

A. No.

Q. Did there come a time when you went to the scene on the next day?

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A. Yes.

Q. What did you do then?

A. We organized a search to look for the weapon.

Q. And when you say "we", who do you mean?

A. It was myself. They put me in charge of a group of men. There was myself, Detective Thompson, Wise, Crickenberger, Sergeant Schoupe, Officer Turner, and Officer Paul Lewis.

Q. And where did you start your search?

A. We started right at the rear of the building in the six thousand block of Wilson Boulevard.

Q. Where did you go from there?

A. We went into the yard that backed up to Ninth Street that backed up to the building and we searched all the area and while we were doing the search, Crickenberger was talking to the people and writing notes and Sergeant Schoupe was taking pictures of the way we were going. We searched all the adjoining yards and every place, all the bushes, every place we would think to search. We crossed Ninth and started down to Liberty and got to a point and started across Liberty Street and got to the east side of Liberty and got to the bottom of the hill at Larrimore Street and made a right turn across Larrimore and between the yards at 1029 Larrimore and 1023 Larrimore Street and all the time searching all the places we could possibly search. Of course, we come through on Arlington Mill Drive between 1020 and 1024 of Arlington Mill Drive and when we got to Arlington Mill Drive, which was a dead end, there was a deep—the water was deep there. Of course, we couldn't go in the water. It was way over our hip boots so I called for one of our police officers who is a skin diver.

Q. What is his name?

A. Officer Hensley and asked if he would respond with his tanks, which he did. Then he arrived, I would say approximately 1:00 o'clock.

By that time—he searched for quite a while and we were just standing there waiting for him and then I thought rather than everybody standing there waiting for him, you know, to keep on searching—Sergeant Moehler was there with a group of others, Officer Beakes and Officer Rubin and several other officers were there. I said let's walk the creek up from this deep spot which we did.

We started up the creek and the water was very deep and we were searching and then we got to another small creek or

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just a little run that runs off to the left of this main creek and we started up in there and Officer Beakes and another officer was in this little creek. We were all on the grass and in the park searching and we come to this bridge. It wasn't a footbridge. It's where they drive the vehicles over in the park, trucks and lawnmowers and so on. I was up on the bank an Officer Beakes hollered that he thought he saw something in the water.

Q. Where was Officer Beakes at this time?

A. He was just going under the bridge and he was in the water.

Q. Did there come a time when you responded to where he was?

page 1420 } A. Yes.

Q. When you got there, what did you see?

A. As soon as he hollered, I got down there and he reached in the water and pulled up this weapon and laid it on the rock right there where he saw it in the water.

Q. What happened, if anything?

A. I advised everybody not to touch it and called the I. D. man, Sergeant Schoupe to take pictures of it there and he did.

Q. Then what happened?

A. After the pictures were taken, I picked the gun up by the swivel and I carried it by the swivel to a cruiser and transported it to the station and I took it upstairs to Captain Weekly's office in the Detective Bureau and Inspector Bell wrote out a property form and a letter of transmittal to the F.B.I. laboratory.

Q. Was Officer Beakes with you all the time?

A. Yes.

Q. Did there come a time when anyone marked that gun?

A. Yes.

Q. Where did he mark it?

A. It was marked at the scene where it was found, by the rocks.

page 1421 } Q. Officer Beakes marked it there before you transported it?

A. Yes.

Q. And how did he mark it?

A. He put something—I guess—I don't know—he put his initials on it or some kind of mark that he could identify it.

Q. Now, did there come a time when the gun left the Police Department?

A. Yes, after—

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Q. (Interposing) Who took it?

A. After the letter of transmittal and everything was typed up, Officer Beakes and myself—I drove the car and he held the gun and we took it to the F.B.I. laboratory and met the F.B.I. agent, Parsons, and he signed the property slip for the gun.

Q. That was the F.B.I Headquarters in Washington, D. C.

A. Yes.

Q. In the laboratory.

Now, how long had you been searching before the gun was found?

A. We started the search sometime around 10:00 o'clock or shortly after and we didn't find the gun
page 1422 } until, I would say, around 2:00, 2:25, 2:30.

Q. And how many search parties were there in the park on that day, if you know?

A. There was my search party with the men I listed, Sergeant Moehler had a search party of seven other, eight uniform men and I'm pretty sure there was another search party on the other side of Four Mile Run Drive searching.

Mr. Hassan: I have no further questions of this witness at this time, Your Honor.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, I take it, around 12:00 o'clock you were at Police Headquarters, is that right, Sergeant Peever?

A. No, I wasn't.

Q. You weren't? You mean on the 25th of August?

A. I wasn't in the Police Department.

Q. Where were you?

A. I was coming across the street. I was over to the Court House and was coming across the street about 12:25 or so and Lieutenant Kodel hollered out to me to respond to the six thousand block of Wilson Boulevard, that there had been a shooting.

Q. At 12:25?

page 1423 } A. Yes.

Q. All right.

And then did you—you immediately responded to the six thousand block of Wilson Boulevard?

A. Yes.

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Q. What time did you leave the Court House area?

A. About 12:30.

Q. Did you ever go over to Washington Boulevard and North Harrison Street?

A. I did not.

Q. All right.

Where were you at 12:00 o'clock?

A. I said I was over in the Court House.

Q. In this Court House here?

A. I'm pretty sure, yes.

Q. So you didn't engage in looking for any suspects in this case, did you?

A. I did not.

Q. How about after you arrived at the scene, what did you do down there?

A. I checked in with my captain, Captain Weekly and Mr. Hassan.

Q. All right.

page 1424 } Q. And they sent you back to the Court House or the police station?

A. Sergeant Kodel was handling things at the scene and Mr. Hassan advised me to go directly to the station, that Detective Davis was on his way with a suspect.

Q. Had Davis arrived when you got there?

A. They were in the station.

Q. On the third floor?

A. Yes sir.

Q. What time did you get back there?

A. About ten minutes of one.

Q. All right.

Now did you immediately go to the third floor and talk to Davis?

A. Yes I did.

Q. And at that time did you talk to John Patler at all?

A. The only thing I did was went in and identified myself to him and told him that we couldn't talk to him and that he would have to wait, he'd have to be advised of his rights in front of the Special Justice and he wouldn't be back until 1:30.

Q. Did you tell him what he was charged with at that time?

page 1425 } A. Did I tell him what he was charged with at that time? No.

Q. Was he charged with anything at that time?

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A. No.

Q. Why would you advise him of his rights if he wasn't charged with anything?

A. Because when we pick up a suspect and question them in regards to a felony, we advise them of their rights in front of a Special Justice.

Q. Now, you come over and took him over at 1:30, I take it, and had the Special Justice advise him what his rights were, right?

A. Yes.

Q. And you immediately took him back to the third floor of the police station?

A. Well, he made a phone call from the Special Justice's office.

Q. All right.

Do you know who that was to?

A. He said he wanted to call his wife.

Q. Now, after he was advised of his rights and he made that phone call, you took him back over to the third floor?

A. Yes.

page 1426 } Q. Now, was that for the purpose of getting some sort of a statement from him?

A. To get some statement from him?

Q. That's right.

A. I took him back over, again advised him of his rights just as the Special Justice did, and see if he wanted to discuss anything about the situation then.

Q. I take it your answer is yes, that was your purpose?

A. My purpose was to talk to him, yes.

Q. Did you give him an opportunity to make bond?

A. Make bond on what?

Q. When you took him to the Special Justice?

A. He hadn't been charged.

Q. All right.

Was he free to go? Suppose he wanted to go home, would you let him go home?

A. I don't think so.

Q. Now prior to that—strike that.

Nobody asked him for a statement prior to even telling him what he was being held for, isn't that correct.

A. I didn't ask for any statement.

Q. Prior to talking to him then, you had not
page 1427 } told him what he was being charged for?

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A. He wanted to know what he was charged for and I said no he was being held because he was picked up because he was a suspect in a felony and he was in the vicinity. He was seen by Inspector Cole and when he saw Inspector Cole he ran and that's why he was brought into the station.

Q. Did he ask what felony you were talking about?

A. No.

Q. He didn't ask you that?

A. No sir.

Q. Did he ask you that over at the Special Justice?

A. There was no mention of what he was charged with?

Q. Did he ask you why he was being held?

A. Yes.

Q. And you refused to tell him?

A. I didn't refuse to tell him. I told him he was being held as a suspect in a felony.

Q. O. K.

Now, did you ask him questions then after you advised him of his rights the second time as to his whereabouts earlier in the day?

A. No. Just about why he was being held, you know, I kept telling him, you know, and he wanted to know if
page 1428 { he was charged and I told him he wasn't charged. I told him the reason he was being held was because he was a suspect and he fit the description of the suspect in this incident that took place up on Wilson Boulevard. There was never no mention of any shooting.

Q. I take it then you were familiar with the description they had on the suspect at that time?

A. No, I wasn't in my car, radio car at the time.

Q. So you didn't know what that description was, did you?

A. I was advised by Davis and Faulkner that this man was picked up.

Q. Now when you asked him—did you ask him some questions and he answered them?

A. It was just in regard to his whereabouts in the area and his clothes being wet.

Q. And he told you that he and his wife had been shopping earlier in the day?

A. Yes.

Q. Did he tell you where or did you ask him?

A. I don't recall exactly where. I think he said they were

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grocery shopping or something but they had been out shopping.

page 1429 } Q. Did you make notes of what he said?
A. I did not.

Q. Did you ask him about what time he left home?

A. What time he left home after they got back and they had the argument?

Q. Yes.

A. Yes.

Q. What did he say?

A. About 11:45.

Q. That's your recollection?

A. That's my recollection.

Q. Did you hear him say anything about around 12:00 o'clock?

A. No.

Q. Your recollection was 11:45?

A. Yes sir.

Q. Was Davis there when this conversation was going on?

A. Yes.

Q. All right.

What color shirt did he have on?

A. It was a pale yellow shirt that had some kind of stripe, small stripe in it.

Q. Was the shirt wet or dry when you saw him?

A. I didn't notice the shirt being too wet, or
page 1430 } wet.

Q. I see.

You say you noticed the pants were wet?

A. Yes.

Q. In what fashion were they wet?

A. They were wet from the bottom on up past his knees.

Q. All right.

Now, did you make any attempt to check out what he told you as to his whereabouts that morning?

A. You mean right then or since then.

Q. Right then.

A. Right at the time that I was talking to him?

Q. Well, or shortly, within a short time thereafter, the same day, prior to charging him did you make any attempt?

A. No, I didn't. Because he had already called his wife and she was on the way over here.

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Q. Now, you say he was a suspect and had not been charged prior to your talking to him, is that right?

A. That's right.

Q. Now, as a result of talking to him, you didn't learn anything there to charge him with, did you?

A. No, I didn't charge him.

Q. What other information—strike that.

Now, did you at any time go back out and look page 1431 } for any other suspect?

A. Myself?

Q. (nodding affirmative) Or any other officers that were there?

A. No.

I was tied up with this thing until late in that evening.

Q. I see

Then you mentioned you were involved in the security measures?

A. Yes.

Q. Why was it necessary to have the security measures you talked about? This is not customary, is it?

A. No. We took the security measures on account of the person who was killed.

Q. Why were you so concerned about security in this case?

A. We didn't want something to happen to Patler.

Q. You thought somebody might shoot him?

A. We didn't know.

Q. Now, did you have police officers on the roof of the building at the police station?

A. I can't say for sure.

page 1432 } Q. Well, the only part of that security then you were involved in was transporting him from the Violations Bureau or from the police station to the Violations Bureau and back to jail?

A. From the police station to the Violations Bureau and then back to jail, yes.

Q. Do you recall what time the warrant was secured?

A. The warrant was secured about around 3:00 o'clock.

Q. Or after?

A. I'm pretty sure we went to Mr. Hassan's office when the warrant was drawn up and it was around 3:00 o'clock.

Q. Why was there a wait of two and a half to three hours to secure a warrant, any reason for that?

A. No, other than he had his counsel present and his wife

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came down and talked to him. Other than that, I don't know why there was a wait.

Q. Do you know any of the officers that you were working with or present in the Detective Bureau that day who went out and made any attempt to locate any other suspect?

A. I don't know personally, no.

Q. Have you ever seen a sketch of the gun?

A. Have I seen a sketch?

Q. Yes.

page 1433 } A. No.

Q. Do you know Mr. Lloyd?

A. I heard his name mentioned but I don't know him, no.

Q. Do you know what kind of a gun you were looking for when you were searching that following day?

A. Not exactly, no.

Q. Did you ever go up to the Nazi Headquarters?

A. No.

Q. Let me ask you this then.

After your search for the gun and so forth, was that the last thing that you've had to do in this case or are you still investigating?

A. My part in the case was just searching and after the weapon was found, that's all I did. The top man was Sergeant Kodel in this case.

Mr. Harrigan: That's all.

Mr. Hassan: Officer Beakes.

(Whereupon, this witness was excused.)

Whereupon, FRANCIS BEAKES, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

page 1434 } DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Francis Beakes, policeman in Arlington County, Virginia.

Q. Directing your attention to on or about the 26th day of August, 1967, did there come a time when you had an occasion to be in the area of Bon Air Park?

Francis Beakes

A. Yes sir, there was.

Q. What was that occasion?

A. I was involved in a search party?

Q. What time did you start searching?

A. Approximately 10:00 o'clock in the morning.

Q. Did there come a time when you found anything?

A. Yes sir.

Q. Would you describe to us where you found what you found?

A. Yes sir.

It's—there's a footbridge. Actually, it's wider than a footbridge at the end of a parking lot in Bon Air Park as you come in off Patrick Henry Drive and underneath the bridge

I found the gun in about six inches of water.

page 1435 } Q. When you say underneath the bridge, how far was it under the bridge from which end?

A. It would have been the north end of the bridge and about six inches back from the edge of the bridge.

Q. When you found this gun, where was it located?

A. It was, as I said, it was in about six inches of water between two rocks.

Q. And what did you do when you first saw it?

A. I picked it up.

Q. Then what did you do with it?

A. I laid it down on a rock out of the water.

Q. Was it completely covered by these two rocks?

A. No. The trigger guard and the chamber were visible. The barrel and butt were under the rock.

Q. And the rock that you set it on, is that one of the rocks?

A. Yes sir.

Q. Now, did there come a time when you marked this gun?

A. Yes I did.

Q. Where was it when you marked it?

A. I marked it at the police station.

Q. At the police station. And who picked it up from the rock?

page 1436 } A. Sergeant Peever.

Q. How did you mark it?

A. Scratched my initials on it.

Q. What did you use?

A. The pin on my badge.

Q. What initials?

A. "B"

Q. Did you put a date on it?

Francis Beakes

A. "B"

Q. Did you put a date?

A. No.

Q. I'd like to show you Property 82B875-VNV875. Would you examine that and tell me if that's the weapon to which you refer?

A. Yes sir. This is the same weapon.

Q. Does it have the marking on it you made on it?

A. Yes it does.

Q. And do you know what that is?

A. Yes sir.

Q. Did you find that and mark that also or just the gun?

A. Just the gun. We didn't unload the weapon. We transported it to the F.B.I. as soon as we found it.

Q. So you did not handle this evidence in so page 1437 } far as it might have been in the gun at the time you handled it?

A. Yes sir.

Q. You don't know anything about that?

A. No sir.

Mr. Hassan: If Your Honor please, I'm going to ask about it being marked for identification, one, 44A and the other 44B.

The Court: The gun will be 44A?

Mr. Hassan: The gun is 44A.

(Whereupon, Commonwealth's Exhibit No. 44A and 44B were marked for identification.)

By Mr. Hassan:

Q. Now, after you marked that gun, what did you do with it?

A. Sergeant Peever and myself transported it to the F.B.I.

Q. Who did you give the gun to, if you know?

A. I believe it was a Mr. Parsons.

Q. Now did you unload that gun?

A. No sir.

Q. Did you touch the gun in any way?

A. No sir.

page 1438 } Q. Other than to pick it up from between the rocks?

A. No sir.

Francis Beakes

Mr. Hassan: Now, I would like to offer this in evidence as Commonwealth's 44A.

The Court: Did the officer put any identifying mark on it?

Mr. Hassan: Yes, he scratched the initial "B" on it.

The Court: Can you point that out, Officer?

The Witness: Yes.

The Court: That's the mark you put on it with the pin of your badge?

The Witness: Yes sir.

The Court: Does the gun appear to be in the condition in which you found it?

The Witness: No sir. At the time, there was a little more rust on it.

The Court: And did it have a clip in it?

The Witness: No sir. This type I don't believe uses a clip.

The Court: All right.

Do you wish to examine?

By Mr. Hassan:

page 1439 } Q. It was in the condition that you found it
when you gave it to the F.B.I.?

A. Yes sir.

Q. Do you know what they did with it?

A. I assume they ran tests on it.

Q. Do you know what they did?

A. No.

Mr. Harrigan: No objection right now, Your Honor, subject to cross examination. I don't know what that will develop.

The Court: All right.

It will be received in evidence as Commonwealth's 44A.

(Whereupon, Commonwealth's Exhibit No. 44A was entered into evidence.)

Mr. Hassan: I have no further questions of this witness, Your Honor.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Were you working on the 25th of August?

A. No sir, I was not.

Francis Beakes

Q. Was that your day off?

A. Yes sir.

page 1440 } Q. What time did you go to work on the
26th?

A. 7:00 o'clock in the morning.

Q. What time did you get down to the Bon Air Park section?

A. It was after lunch, I would say approximately 1:00 o'clock.

Q. Who did you go down with?

A. Sergeant Moehler, myself, Officer Roof, Officer Gavin, Officer Wolfe, and Officer Gavin.

Q. Who was in charge of the search party that you were in?

A. Sergeant Moehler.

Q. All right.

And this area in which you said you discovered that gun, was that right under a footbridge?

A. Yes.

Q. (Continuing) Or a bridge?

A. It's a bridge, yes sir.

Q. And that bridge, I take it, was across the stream?

A. Yes sir.

Q. Now, how deep was the water under that bridge?

A. I'd say approximately six to eight inches.

Q. Now the gun was—would you say the gun
page 1441 } was visible if someone was standing and looking
down at it through this six inches of water?

A. You mean through the bridge or from the bridge?

Q. Either way? Was it visible in the water?

A. Yes.

Q. What part was visible?

A. The trigger guard and butt?

Q. Now, this part was visible?

A. This part right in here was, this part right here.

Q. And you picked it up?

A. Yes.

Q. And how do you pick it up?

A. I believe right in here on the butt.

Q. Show us.

A. Approximately like that (indicating).

Q. Did you put your hand around the stock

A. No sir.

Francis Beakes

Q. Now after you picked it up—now do you recall testifying September 28, 1967?

A. Yes sir.

Q. Do you recall when you were asked:

“Question: When you picked it up, how did you pick it up?”

and your answer:

page 1442 } “Answer: By the grip”

“Question: By the grip. The handle grip?

With two fingers or what?”

“Answer: I don’t recall”

“Question: You just reached down and grabbed it by the handle and put it on the rock?”

“Answer: Yes sir”

Do you remember that?

A. Yes sir. Something like that.

Q. Was it the handle you grabbed it by?

A. Well, up towards, like I say, right in here.

Q. Where are the grips on the gun?

A. This whole part right here (indicating)

Q. That’s the part you grabbed?

A. Yes sir. Up towards the top.

Q. Now, you put it on a rock?

A. That’s right.

Q. Did somebody tell you to do that?

A. No sir.

Q. Who took the picture of it?

page 1443 } A. I believe it was Sergeant Schoupe.

Q. Now, you didn’t check to see if it was loaded or anything?

A. No sir.

Q. Now, where in relation in the park is this footbridge?

A. As you come into Bon Air Park off of Patrick Henry Drive. Patrick Henry Drive is Four Mile Run. You go all the way into the park to the south end and I would say approximately 50 yards from there is the bridge.

Q. Is it parallel right across from the baseball field?

A. I’d say possibly 200 yards, 300 yards from the baseball field.

Q. Two Hundred yards?

A. Yes sir.

Francis Beakes

Q. Now, on direct you said the gun was about six inches back from the edge of the bridge?

A. Approximately.

Q. So somebody could have stood on the bridge and dropped it there?

A. I couldn't say.

Q. Pardon?

A. I couldn't say how it got there.

Q. It could have gotten there that way, right?

page 1444 } A. I would say it's possible.

Mr. Harrigan: That's all.

The Court: Any redirect?

REDIRECT EXAMINATION

By Mr. Hassan:

Q. Officer Beakes, come to the map and indicate on this map where that bridge was for Mr. Harrigan where you found the gun?

A. Is this supposed to represent the parking lot?

Mr. Harrigan: I object to his question. If he knows what he's talking about, fine.

By Mr. Hassan:

Q. Start from where you started your search that morning and following yourself down until you get to it.

That's Wilson Boulevard (indicating), this is Washington Boulevard (indicating), this is west towards Seven Corners. Is that where you found the gun? (indicating)

A. Yes sir.

Q. Would you write the word gun or print it?

The Court: Now, Officer, would you stand back and—

Mr. Hassan: Thank you.

No further questions.

RECROSS EXAMINATION

page 1445 } By Mr. Harrigan:

Q. Where is the railroad tracks?

A. The railroad tracks are right here (indicating).

Q. All right.

Francis Beakes

Now, what is this area through here (indicating)?

A. That's where the creek tapers off.

Q. Any other bridges around there?

A. I don't know, as far as this part goes. Right about in here is what appears to have been a bridge, on either side there are abutments where there had been a bridge.

Q. Where's the baseball field we've been talking about?

A. Across over in here.

Q. And you said from here (indicating) to over to this baseball field is 200 yards?

A. Approximately.

Mr. Harrigan: That's all.

The Court: May Officer Beakes be excused.

Mr. Hassan: Yes.

The Court: All right, sir, you're excused.

Mr. Hassan: Now, if Your Honor please, I'm going to offer in evidence Commonwealth's Exhibit 4 for identification which is this map on which each witness made their mark.

The Court: I gather you gentlemen stipulated page 1446 } to that with the proviso to add to it for a larger area.

Do you have any objection?

Mr. Harrigan: We object until the other section is also added.

Mr. Hassan: The Commonwealth offers it as 4.

The Court: The objection is over ruled but you may add parts as you see fit when you come to it.

It will be received in evidence.

(Whereupon, Commonwealth's Exhibit No. 4 was entered into evidence.)

Mr. Harrigan: Exception.

Mr. Hassan: If Your Honor please, I'd like to have—what I intended to do at this time was to call Lieutenant Fouche to put on the tape.

I expect it will be beyond the time we decided to go. There will be a minimum of twenty-eight minutes and I presume it will probably take some forty odd minutes.

I can call Officer Schoupe and start the pictures. That will be next.

The Court: Let's go to that. I'd like to take advantage of some additional time.

Walter N. Schoupe

Mr. Hassan: Officer Schoupe.

page 1447 } Whereupon, WALTER N. SCHOUPE, was recalled as a witness, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Would you state your name and your occupation, sir?

A. Sergeant Walter N. Schoupe, policeman, Arlington County Police Department.

Q. Sergeant Schoupe, were you previously testified in this case and was sworn?

A. Yes I was.

Q. Now, were there any additional pictures that you took in this case?

A. Yes, I have a group of pictures.

Q. What group do you have?

A. (Continuing) And I have additional pictures of the auto that I took in the impounding lot; and I have a group of pictures taken from the rear of the shopping center on Wilson Boulevard, all the way down to the Dominion Hills area to the point in Bon Air Park where the pistol was found.

Q. Would you let us have that last group first?

I show you photograph No. 35770E 01 and ask
page 1448 } you, sir, what that picture is?

A. That's a picture of the rear—

Mr. Harrigan: (Interposing) I object to him testifying about every picture. If he's going to identify them, he can and admit them into evidence.

By Mr. Hassan:

Q. That's a picture you took?

A. Yes sir.

Q. Where were you standing when you took it?

A. In the rear yard of 6026 North Ninth.

Q. What direction were you facing?

A. Actually, approximately south at that point to the rear of the shopping center.

Q. This is a true representation of what you saw at the time you took the picture?

A. Yes it is.

Walter N. Schoupe

Q. When did you take the picture?

A. Started approximately 10:00 a. m. on the 26th day of August, '67.

Q. Is that the first picture you took?

A. Yes it is.

Mr. Hassan: I would like to have this marked for identification, Commonwealth's 45A.

page 1449 } (Whereupon, Commonwealth's Exhibit 45A
was marked for identification.)

The Court: To save time, gentlemen, why don't we do the same as we did with the soil samples and let him identify each one and then let counsel examine them all and then state your objections.

Do it all at once and we will have objections and rulings all at once.

By Mr. Hassan:

Q. I show you 3577OE-02 and ask you if that is a picture that you took?

A. Yes it is.

Mr. Hassan: I'd like to have that marked for identification.

(Whereupon, Commonwealth's Exhibit No. 45B was marked for identification.)

By Mr. Hassan:

Q. And I show you 3577OE-03 and ask you if that is a picture which you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. page 1450 } 45C was marked for identification.)

Q. And I show you 3577OE-04 and ask you if that's a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45D was marked for identification.)

Walter N. Schoupe

Q. I show you 3577OE-05 and ask you if that's a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45E was marked for identification.)

Q. And I show you 3577OE-06 and ask you if that is a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45F was marked for identification.)

Q. And I show you 3577OE-07 and ask you if that is a picture you took?

A. Yes it is.

page 1451 } (Whereupon, Commonwealth's Exhibit No. 45G was marked for identification.)

Q. And I show you 3577OE-08 and ask you if that is a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45H was marked for identification.)

Q. And I show you 3577OE-09 and ask if that is a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45I was marked for identification.)

Q. And I show you 3577OE-10 and ask you whether that's a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45J was marked for identification.)

Q. And I show you 3577OE-11 and ask you if that is a picture you took?

Walter N. Schoupe

page 1452 } A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45K was marked for identification.)

Q. And I show you 3577OE-12 and ask you if that's a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45L was marked for identification.)

Q. And I show you 3577OE-13 and ask you if that's a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45M was marked for identification.)

Q. I show you 3577OE-14 and ask you if that's a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45N was marked for identification.)

Q. I show you 3577OE-15 and ask you whether that's a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45-O was marked for identification.)

Q. I show you 3577OE-16 and ask you whether that's a picture you took?

A. Yes sir.

(Whereupon, Commonwealth's Exhibit No. 45P was marked for identification.)

Q. I show you 3577OE-17 and ask you if that's a picture you took?

A. Yes it is.

Walter N. Schoupe

(Whereupon, Commonwealth's Exhibit No. 45Q was marked for identification.)

Q. I show you 3577OE-18 and ask you if that's a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45R was marked for identification.)

page 1454 } Q. I show you 3577OE-19 and ask you if that's a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45S was marked for identification.)

Q. I show you 3577OE-19 and ask you if that's a picture you took?

A. Yes.

That's an enlargement of the previous one.

Mr. Hassan: I'd like to have this marked for identification.

The Court: As S-1?

Mr. Hassan: This should be S-1 and S-2. This is an enlargement of that one.

The Court: The previous one is S-1 and the enlargement is S-2? Is that the way you want it?

Mr. Hassan: Yes Your Honor.

(Whereupon, Commonwealth's Exhibits No. 45S-1 and 45S-2 were marked for identification.)

By Mr. Hassan:

Q. I show you 3577OE-20 and ask you if that page 1455 } is a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45T was marked for identification.)

Q. I show you another picture marked 3577OE-20 and ask you, sir, what the correct designation of those two should be?

A. The larger is an enlargement of the first.

Q. Of 20?

Walter N. Schoupe

A. That's correct.

Mr. Hassan: So that one will be T-1, the smaller one; and T-2, the enlargement.

(Whereupon, Commonwealth's Exhibit No. 45T-1 and 45T-2 were marked for identification.)

By Mr. Hassan:

Q. I show you 3577OE-21 and ask you, sir, if that is a picture which you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45U was marked for identification.)

page 1456 } Q. I show you 3577OE-22 and ask you if that is a picture which you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45V was marked for identification.)

Q. I show you 3577OE-23 and ask if that's a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45W was marked for identification.)

Q. I show you picture 3577OE-24 and ask if that's a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45X was marked for identification.)

Q. I show you 3577OE-25 and ask you if that's a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. page 1457 } 45Y was marked for identification.)

Walter N. Schoupe

Q. And I show you 3577OE-26 and ask you if that is a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45Z was marked for identification.)

The Court: You want to start with "AA"?

Mr. Hassan: "AA", yes Your Honor.

By Mr. Hassan:

Q. I show you 3577OE-27 and ask you if that is a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45AA was marked for identification.)

Q. I show you 3577OE-28 and ask you if that is a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45BB was marked for identification.)

Q. I show you 3577OE-29 and ask you if that page 1458 } is a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45CC was marked for identification.)

Q. I show you 3577OE-30 and ask you whether that is a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45DD was marked for identification.)

Q. I show you 3577OE-31 and ask you whether that is a picture you took?

A. Yes it is.

Walter N. Shoupe

(Whereupon, Commonwealth's Exhibit No. 45EE was marked for identification.)

Q. I show you 3577OE-32 and ask you whether that is a picture you took?

A. Yes sir, it is.

(Whereupon, Commonwealth's Exhibit No. 45FF was for identification.)

page 1459 } Q. And I show you 3577OE-33 and ask you if that is a picture you took?

A. Yes it is.

(Whereupon, Commonwealth's Exhibit No. 45GG was marked for identification.)

Q. Now, what time did you start taking this 3577OE group of pictures?

A. I took them in two groups. Through number 27 was 10:00 a. m. on August 26, 1967 to 3:00 p. m. on the same day.

The second group, 28 through 33 were started at approximately 2:55 p. m. The length of time it took me to get to the different locations probably would be twenty-five minutes.

Q. And that's 28 through 33?

A. That's correct.

And that was on the 31st of August.

Q. 31st of August?

A. That's correct.

Q. 1 through 27 were taken on August 26th and started when?

A. 10:00 a. m.

Mr. Hassan: Now, if Your Honor please, can page 1460 } we go on with this in the morning?

The Court: Sure.

All right. Ladies and gentlemen we'll recess for the evening and we'll see you at 10:00 o'clock in the morning.

(Whereupon, at 5:55 p. m., the hearing was recessed, to reconvene at 10:00 a. m., Wednesday, December 6, 1967)

Walter Shoup

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page 1465 }

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WALTER SHOUP, resumed the stand, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Sergeant Shoup, I show you Commonwealth's Exhibit No. 17F and ask you, sir, did there come a time when you had occasion to enlarge the portion of that photograph which shows Mr. Rockwell's wristwatch?

A. Yes, I did.

Q. Do you have that with you?

A. Yes, I have.

Q. I'd like to have that marked for identification 46, I'd like to offer that in evidence, Your Honor.

The Court: Is there objection.

Mr. Harrigan: I am not sure for what purpose he is offering it in evidence.

The Court: I gather it is for the purpose which 17F was offered, which is a little difficult to see as to the time on the wrist watch and this is an enlargement to make that a little easier to read, is that the purpose, Mr. Hassan?

Mr. Hassan: Yes, it is, Your Honor.

Mr. Harrigan: Even with that purpose in mind, I fail to see what probative value it has.

The Court: There was some controversy in cross-examination, as I recall, as to the time the body was removed from the scene and I imagine it goes to that collateral point.

Mr. Harrigan: It obviously had been removed to the time of that.

The Court: Right.

Mr. Harrigan: I don't object to it then.

Mr. Hassan: It also establishes a time of the taking of the photograph, the photographer says when he started and he took them one after another, and this is in the middle of it.

Walter Shoup

Mr. Harrigan: That presupposes the time of the watch is right, too, doesn't it?
page 1467 } Mr. Hassan: You may examine the watch, it was running here, I don't know whether it was right.

Mr. Harrigan: I don't know if it was running there, though.

Mr. Hassan: Because that will be related to correct times when Lieutenant Fuchsman produces the tape. I would like to show you Commonwealth's Exhibit—

Mr. Harrigan: Is it necessary to have both of them in then, 17F and that one also?

Mr. Hassan: I think it is, if it is to have any probative value.

The Court: I think it makes 17F a little easier to read, I could read 17F, but evidently you gentlemen could not, I remember some colloquy at the counsel table.

(The photograph previously referred to was marked Commonwealth's Exhibit No. 46 for identification and received in evidence.)

Mr. Hassan: I think I have got 20/20 vision with or without glasses, but reading, sometimes, I am a little fuzzy.

By Mr. Hassan:

Q. I would like to show you Commonwealth's Exhibit 6B-1 and 6B-2 and 6C and ask you, sir, whether or not those are pictures which you took?

A. Yes, sir, they are.

Q. Where and when did you take those pictures?

A. They were taken approximately 4:35 p. m.
page 1468 } on the 26th day of August in the paint shop at the Arlington County Property Room.

Q. Who was present at that time?

A. Detective Crickenberger.

Q. What did you observe about anything that occurred at the time you were taking those pictures?

A. I don't quite understand you, sir.

Q. Was there any activity by Detective Crickenberger in your presence which you saw?

A. Yes, sir, we picked up metal fragments which appeared to be fragments of bullets, while I was taking those photographs.

Walter Shoup

Q. Where were they obtained from?

A. Various places in the vehicle.

Q. Who took custody of those?

A. Detective Crickenberger.

Q. Did you have custody of them at any time?

A. No, I did not.

Q. Now, I show you No. 6C and ask you, sir, whether or not you can tell us whose hands are in that picture?

A. That is Detective Crickenberger's hands.

Q. Is a portion of his face showing there?

A. Yes.

page 1469 } Q. Now, yesterday, we introduced Commonwealth's Exhibit for identification No. 45A through 45AA which are your pictures 1 to 27 and I ask you, sir, what was the occasion for taking those pictures?

A. It was tracing the—

Mr. Harrigan: I would object to his opinion, what he was tracing, it calls for an opinion based on hearsay, speculation and whether he's tracing something or not is an issue here, I don't think he's qualified to say what he traced.

The Court: His answer would probably be of the kind that you have indicated and the objection is sustained if that is to be the answer, but I imagine Mr. Hassan is interested in what his instructions were and I will let him ask that.

Mr. Hassan: Of course, the objections were not directed to the question but to the answer.

The Court: That's right, which hadn't been given, but we might as well save time.

By Mr. Hassan:

Q. What was the occasion for you taking the pictures, Sergeant Shoup?

A. Following a search team taking pictures of page 1470 } the team as it proceeded.

Q. When was this done, sir?

A. On the 26th day of August, beginning at 10:00 a. m.

Q. Who was the group that you were with at this time?

A. Detective Crickenberger, Sergeant Pever, Officer Turner, and looking at the pictures, I can pick the others out.

Q. There were some others in the group?

A. Yes, there were, there were about four or five.

Q. I show you picture Number 1, marked 45A for identifica-

Walter Shoup

tion, sir, and ask you if you will tell me where you stood when you took that picture?

A. I stood in the rear yard of 6026 North 9th Street.

Q. Is that a true picture of what you were looking at?

A. Yes, it is.

Q. What is it a picture of?

A. It is the back of the shopping center.

Q. When you say the back, is it related to either the west end or the middle or where?

A. The east end of the shopping center.

Q. What does it show?

A. It shows the back wall, the brick fence overhanging the roof and that would be about the extent of it.

Q. Now, Your Honor, how do you want me to page 1471 } offer these, one by one, or in a group of twenty-seven at one time?

The Court: I think it would save time if you would offer them all at one time, let him state what each shows and let Mr. Harrigan cross-examine him and state an objection.

By Mr. Hassan:

Q. I show you photograph Number 2, Commonwealth's Exhibit 45B and ask you, sir, where you were standing when you took that picture?

A. I was standing in the rear yard of 6022 North 9th Street and the camera was facing in approximately the same direction as it was in the prior picture, shows the east end of the shopping center.

Q. I show you your picture Number 3, Commonwealth's Exhibit 45C and ask you, sir, where you were standing when you took that picture?

A. This was in front of 6022 North 9th Street, facing east on 9th Street, you can see the stop sign at Liberty Street in the background.

Q. I show you your picture Number 4, Commonwealth's Exhibit 45D and ask you, sir, where you were standing when you took that picture?

A. That would be the southwest corner of the intersection of 9th and North Liberty Streets, looking north page 1472 } on Liberty Street.

Q. I show you your picture Number 5, Commonwealth's Exhibit 45E and ask you, sir, where you were standing when you took that picture?

A. Standing in front of 900 North Liberty Street, looking north along the west curve of North Liberty Street.

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Q. I show you picture Number 6, Commonwealth's Exhibit 45F and ask you, sir, where you were standing when you took that picture?

A. I was moving north on Liberty Street, approximately at the intersection of 9th Road and Liberty Street, the picture shows north on Liberty Street.

Q. Are there any individuals in this picture?

A. Officer P. J. Lewis, Detective Crickenberger, Sergeant Pever, Detective Wise, Officer Turner, and the other I can't make out at this time.

Q. I show you your picture Number 7, Commonwealth's 45G and ask you, sir, where you were standing when you took that picture?

A. On the west curve of Liberty Street, just north of North 9th Road, looking north along the west sidewalk.

Q. I show you your picture Number 8, marked Commonwealth's Exhibit 45H and ask you, sir, where page 1473 } you were standing when you took that picture?

A. In front of 935 North Liberty Street, looking northeast to 934 North Liberty Street.

Q. What does that picture show?

A. It shows a '59 Chevrolet sitting in front of the house.

Q. Is it a picture up and down or across?

A. Across the street.

Q. Looking towards the east?

A. It would be about northeast, probably.

Q. I show you your picture Number 9, Commonwealth's Exhibit 45I and ask you, sir, what that is?

A. I am not sure on the last one, did I say 935 or 934? It should have been 934 to 35.

The Court: Are you speaking of your previous shot, now?

The Witness: The previous shot.

The Court: The previous shot was 934 North Liberty looking toward 935?

The Witness: That's correct, this is in front of 935 looking north on the east sidewalk of Liberty Street.

By Mr. Hassan:

Q. That is from where the last picture page 1474 } viewed?

A. That's right, the same vehicle.

Q. I show you your picture Number 10, Commonwealth's

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Exhibit 45J, and ask you, sir, where you were standing when you took that picture?

A. That is further north on Liberty Street in front of 1007 North Liberty Street, looking also in the same direction as the previous picture.

Q. That direction is what, sir?

A. North.

Q. I show you your picture Number 11, Commonwealth's Exhibit 45K, and ask you, sir, what that is?

A. That is looking in the same direction, that is moving up the street slightly from in front of 1021 North Liberty Street at the intersection of Larrimore Street, which is in the background.

Q. I show you your picture Number 12, Commonwealth's Exhibit 45L, and ask you where you were standing when you took that picture?

A. That would be the southwest corner of the intersection of Liberty and Larrimore Streets, looking east on Larrimore Street.

Q. I show you your picture Number 13, Commonwealth's Exhibit 45M and ask you where you were standing, sir, when you took that picture?

A. That is across the street from 1033 North Larrimore looking at the front of 1033 North Larrimore.

Q. I show you your picture Number 14, Commonwealth's Exhibit 45N, and ask you, sir where you were standing when you took that picture?

A. That was in the driveway of the same house mentioned before, 1033 North Larrimore, looking through the back yard with homes, the rear of the homes and Arlington Mill Drive in the background.

Q. I show you your picture Number 15, Commonwealth's Exhibit 45O, and ask you, sir, where you were standing when you took that picture?

A. That is from the back yard of 1033 North Larrimore looking through the back yard of 1024 Arlington Mill Drive, which are the back yards and also looking across Arlington Mill Drive, across the tracks into Bonair Park where children are playing.

Q. I show you picture Number 16, Commonwealth's Exhibit 45P, and ask you, sir, what that is?

A. That is moving forward in the same direction as the prior picture showed to the stairs beside 1024 North Arlington Mill Drive, looking into the park again.

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page 1476 } Q. I show you picture Number 17, Commonwealth's Exhibit 45Q, and ask you, sir, where you were standing when you took that picture?

A. I was standing in the creek—well, not exactly in the water, but in the creek bed, under the bridge in Bonair Park, it shows Officer Beakes kneeling beside the weapon where it was when I arrived. The weapon is sitting on the stone.

Q. I show you your Number 18, Commonwealth's Exhibit 45R, and ask you, sir, where you were standing when you took that picture?

A. Just a little closer than I was on the last picture, Officer Beakes has his hand in the water to indicate where he found a pistol before he put it on the rock.

Q. I show you your Number 19, Commonwealth's Exhibit 45S-1, and ask you, sir, what that is a picture of?

A. A picture of the pistol lying on the rock, a little closer than the last picture.

Q. I show you your Number 19, Commonwealth's Exhibit S-2, and ask you, sir, what that is a picture of?

A. It is an enlargement of the prior picture.

Q. I show you your picture Number 20, Commonwealth's Exhibit Number T-1, and ask you, sir, what that is a picture of?

page 1477 } A. A picture of the pistol from a different angle, the same as was shown in the others.

Q. Is that the location where the pistol was when you first arrived and saw it?

A. That's correct.

Q. I show you your picture Number 20, again Commonwealth's Exhibit Number T-2, and ask you, sir, what that is?

A. An enlargement of the picture before that.

Q. I show you your picture Number 21, Commonwealth's Exhibit 45U, and ask you, sir, where you were standing when you took that picture?

A. It shows the top of the bridge under which the pistol was found, Officer P. J. Lewis is standing with his arm pointing down through the bushes to the point where the pistol was.

Q. I show you your picture Number 22, Commonwealth's Exhibit Number 45V, and ask you, sir, where you were standing when you took that picture?

A. I had moved slightly from the previous picture, and this just shows the bridge without any officers in the picture.

Q. I show you your picture Number 23, Commonwealth's

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Exhibit 45W, and ask you, sir, where you were standing when you took that picture?

page 1478 } A. The bridge is in the background, I was south of the bridge, there is what I call a spill-way where the water runs through under the bridge and down this spill-way into the creek bed.

Q. You said you were standing south of the bridge?

A. That would be the approximate direction, south.

Q. That picture is taken approximately looking north?

A. Looking approximately north.

Q. I show you your picture Number 24, Commonwealth's Exhibit 45X, and ask you, sir, what that is a picture of?

A. If we could go back to another picture, I can take this in with the others before, if you will.

Q. Go ahead.

A. My photograph Number 16, I don't have your numbers for it.

Q. Commonwealth's Exhibit 45P.

A. This is moving in a little closer to the park from Number 45P, showing the railroad track and the playground in which the children were playing in the park in the background, the creek runs more or less through this way in the picture (indicating).

Q. I show you your picture Number 25, Commonwealth's Exhibit Number 45Y, and ask you, sir, what that is a picture of?

page 1479 } A. In the background actually, it would be looking north, at this point, there is a small creek which had the bridge, under which the pistol was found. That small creek runs into a larger creek which runs across the picture there (indicating), these are bridge supports (indicating), the county is, apparently, going to put a bridge across there, they're visible in the last picture we have there, it is moving in closer from the last picture.

Q. I show you your Number 26, Commonwealth's Exhibit Number 45Z, and ask you, sir, what that is a picture of?

A. I moved slightly to the south of those bridge supports mentioned, and took a photograph up north to show the creek bed in which the pistol was found.

Q. I show you your Number 27, Commonwealth's Exhibit AA, and ask you, sir, what that is a picture of?

A. This is moving, again, up the small creek bed, in the background. In the darkness is where the spill-way comes from beneath the bridge.

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Q. That is Commonwealth's Exhibit Number 45AA.

Did that complete the series of pictures that you took with the party that you described, starting at approximately 10:00 o'clock in the morning?

A. Yes, it did.

page 1480 } Q. Now, did there come a time that day when you took another group of pictures?

A. Yes, the photographs that you showed me a little earlier of the vehicle, I took the same day.

Q. The same day, now, I have Commonwealth's 45BB through 45GG, which are your Numbers 28 through 33.

When did you take those?

A. I took those on August the 31st.

Q. What was your occasion for taking these pictures?

A. I wanted to get a little better coverage on the set of photographs I have here, there are spaces in between which I felt I should cover with photographs.

Q. I show you your picture Number 28, Commonwealth's Exhibit 45BB, and ask you, sir, where you were standing when you took that picture?

A. It is a little roadway that runs through the park, it actually runs at that point where it would probably be—well, it wiggles pretty much up through there, but it runs down through the park and sort of parallels the main stream that runs through the park and it just shows the bridge from more of a distance and the shots I had shown earlier.

Q. What else does it show?

A. Swings in the background and a drinking
page 1481 } fountain, and of course, a lot of trees.

Q. I show you picture Number 29, Commonwealth's Exhibit Number 45CC, and ask you, sir, where you were standing when you took that picture?

A. That is, again, showing the bridge but I just moved slightly to the south and the west to try to get a little angle.

Q. I show you your picture Number 30, Commonwealth's Exhibit Number 45DD, and ask you, sir, where you were standing when you took that picture?

A. I moved more to the southwest and also took a picture of the bridge, it's got picnic tables in the foreground, charcoal grills, and swing sets, and so forth.

Q. I show you your picture Number 31, Commonwealth's Exhibit Number 45EE, and ask you, sir, where you were standing when you took that picture?

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A. That is south of the bridge under which the pistol was found, showing the creek bed.

Q. I show you your picture Number 32, Commonwealth's Number 45FF, and ask you, sir, where you were standing when you took that picture?

A. In the rear yard of 6022 North 9th Street, looking toward 9th Street, the driveway is to the left of 6022 9th Street.

page 1482 } Q. I show you your picture Number 33, and Commonwealth's Exhibit Number GG, and ask you, sir, where you were standing when you took that picture?

A. The southwest corner of 6022 North 9th Street, looking out the driveway, a vehicle sits in the driveway, 9th Street is in the front, that fills in after between Numbers 2 and 3 of the original set of pictures.

Q. Now, if Your Honor please, Sergeant, did you take any other pictures that we have not now introduced for identification?

A. I have photographs here I took of the vehicle at the property yard, in the property yard, the others were taken in the paint shop. These were taken in the property yard.

Q. May I see those?

I'd like to have these marked, Your Honor, Commonwealth's Exhibit 47A, B, C, D.

I show you your picture Number 3577F4, Commonwealth's Exhibit for identification 47A, sir, and ask you where you were standing when you took that picture?

A. Arlington County Police Department Impounding Lot, it showed a 1958 Chevrolet with the doors open, left profile of the vehicle.

page 1483 } Q. I show you your 3577F5, Commonwealth's Exhibit for Identification 47B, and ask you, sir, where that was taken and what it shows?

A. That is the same as the prior picture, it shows the left profile of the vehicle with the doors closed.

Q. I show you your Picture 3577-F-6, Commonwealth's Exhibit for Identification Number 47C, and ask you, sir, what that shows?

A. Looking in the left front through the windshield with holes in it to the interior of the vehicle.

Q. I show you your picture 3577-F-7, Commonwealth's Exhibit Number 47D, and ask you, sir, what that shows?

A. That is the interior, right rear interior, of the vehicle

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with the seats removed to show a hole in the right rear wheel well, the hole from which we took—we pulled the rear seat out, a particle of what appeared to be a bullet fell down from this hole.

Q. I show you your picture 3577-F-8, Commonwealth's Exhibit for Identification 47E, and ask you, sir, what that is a picture of?

A. That is a close-up of the hole mentioned in the prior picture.

Q. I show you your 3577-F-9, Commonwealth's page 1484 } Number 47F for Identification, and ask you, sir, what that is a picture of?

A. The front profile on the '58 Chevrolet.

Q. What does that show?

A. Showing holes in the windshield, the tag number, and so forth.

Q. Now, if Your Honor please, I would like to offer these three groups of pictures in evidence.

The Court: Do all the pictures that you have taken, correctly represent the scene which you saw in the photograph?

The Witness: Yes, sir.

The Court: Do you wish to cross-examine?

Mr. Harrigan: Yes, Your Honor.

The Court: Does that complete your examination in chief, so that this can be the entire cross-examination of this witness?

Mr. Hassan: I have four or five more questions, depending on the cross-examination—

The Court: I just wondered if you were through, entirely?

Mr. Hassan: No, I am not through.

The Court: Okay, Mr. Harrigan, let's deal with these photographs.

VOIR DIRE EXAMINATION

page 1485 } By Mr. Harrigan:

Q. I show you this 47A and 47B, it shows you the side of the car with the doors closed and the doors open, right?

A. Yes, sir.

Q. Now, other than showing a car with the doors closed and the doors open, what is the purpose of that picture?

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Mr. Hassan: Objection, Your Honor.

Mr. Harrigan: We have a dozen pictures showing the car, already, Your Honor.

Mr. Hassan: I don't know why the photographer would know that.

Mr. Harrigan: Well, he took them.

Mr. Hassan: He was told to.

The Court: I think that runs into the objection that you raised before, Mr. Harrigan, you are likely to get an answer of what the police's theory is, which I don't think you are entitled to.

Mr. Harrigan: All right, then I move to strike those two as having no probative value, it shows the car in the parking lot with the doors open and the doors closed, it just clutters up the record, there's twenty pictures of the car already.

The Court: Mr. Hassan, do you want to state page 1486 } the purpose for which they are offered or relevancy they have?

Mr. Hassan: They are part of the search of Detective Crickenberger, showing the condition of the car the time the search was made, the results of the search. They are a photographic record of the testimony of the witness, Officer Crickenberger, who will be on the stand shortly.

The Court: I will take your motion under consideration, Mr. Harrigan, go ahead.

Mr. Hassan: To save time, that is the whole group.

Mr. Harrigan: Here's the same picture of the car with a license number, which we have twenty of them already, I object to that, here is one with the bullet holes, I object to that, we have got fifteen pictures of bullet holes already. Here's one that shows where they ripped up the back seat, I don't know what that is going to show. I will reserve on that one. Here's one with the hole, I don't know what that is going to show.

So I object to 47B as showing nothing but a car standing on the property lot, 47A as showing the same car with both doors open, the right doors, both of them must show that the doors open, 47F. I object to, it shows the car standing on the parking lot with a license number and there's page 1487 } other pictures in evidence which reflect the same thing and 47C purports to be two bullet holes in the window and we have quite a few of these already in evidence, I just think it's cumulative on that ground. I object to all of them.

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The Court: Mr. Hassan, is there a picture that has been admitted into evidence, taken out of the scene of the shooting in the shopping center which shows this Chevrolet so that the license plate can be read?

Mr. Hassan: Yes, there is, Your Honor, and this picture was taken to show that this examination that Officer Crickenger made was of the same vehicle with the bullet holes in the same position in the windshield and with the same license plate on it and he showed the rest that what he did was to make sure that there will be no question of doubt that the examination was of the same car that was at the scene.

The Court: I remember the photograph that we introduced taken at the paint shop, I did not admit them into evidence at that time because there was no showing it was the same car.

Mr. Hassan: This is the same photographer.

The Court: But if there are some photographs in evidence, taken with the car still at the scene, so this
page 1488 } can be identified by comparison with those of
the same automobile with the same license plate,
then I would be inclined to admit these now because this is the photographer who said it correctly represents what he saw, we can now establish it was the same car and apparently it is pertinent to prove part of the Commonwealth's theory.

I think the defense's objection would go to the weight of them in evidence, rather than their admissibility.

Mr. Hassan: Exhibit 17A to 17K are the ones taken at the scene, 17D shows the rear view with the license plate, the car is shown in various positions with the body of Rockwell at the scene, the windshield is shown from the ground and from above, and these are all identifying pictures of something that was done at a later date.

The Court: Those were admitted, weren't they?

Mr. Hassan: Yes.

The Court: I will overrule, then, the defense's objections to the admissibility of 47A through 47F and admit those in evidence at this point, but I think that the points that have been raised by Mr. Harrigan, some of them, don't really show anything very distinct and are more or less cumulative and go to their weight which you can argue to the jury.

page 1489 } (The photographs previously referred to
were marked Commonwealth's Exhibits No. 47A,
No. 47B, No. 47C, No. 47D, No. 47E, and No. 47F for identification and received in evidence.)

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Mr. Hassan: They are related to a search and are photographic proof of testimony of a man who will testify to the search, that is Detective Crickenberger.

Mr. Harrigan: All right, where's that first series?

Mr. Hassan: They are going to be admitted, Your Honor.

Mr. Harrigan: This series of 45A, what was the date again they were taken?

The Witness: August 26, 1967.

Mr. Harrigan: Now basically, what these show are Larri-more Street, isn't that right?

Mr. Hassan: I didn't hear what you said, Mr. Harrigan, I am sorry.

Mr. Harrigan: Basically, what these show is your view from various positions of Liberty Street, excuse me.

Mr. Hassan: I don't understand the term page 1490 } "basically," they either show it or they don't, "basically" goes to the theory of the Commonwealth's case and I don't think that this witness knows my theory.

The Court: I don't know if he's got an answer to the question.

Mr. Harrigan: I got one from Mr. Hassan, I didn't get one from the witness.

Mr. Hassan: That might be an objection to your use of the term.

The Court: All right, the objection is sustained, don't ask "basically," ask him what they show.

By Mr. Harrigan:

Q. Now do you know if this is the way the street looked on the 25th?

A. I wasn't there on the 25th, so I couldn't say.

Q. You don't know whether there were more cars or less cars parked on the street that day?

A. No, I don't.

Q. Why didn't you take a shot way down to the end of the dead end of Liberty Street, any reason for that?

A. One shows the dead end of Liberty Street.

Q. One?

A. Yes.

page 1491 } Q. From about 300 yards away, is that the one, No. 45K?

A. Yes, that shows it.

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Q. I would object to picture 45P which is another picture of 1033 Larrimore and then the driveway at 1033 Larrimore.

The Court: That is in?

Mr. Harrigan: 45N, yes, Your Honor, and 450, which is apparently a back yard of the same address.

The Court: According to my notes, that is supposed to show the entrance to Bonair Park and the distance, yes, it does.

Mr. Harrigan: It shows what they call the entrance.

The Court: We'll strike entrance.

Mr. Harrigan: Just say Bonair Park.

And 45P, I move to strike that, there's no evidence at all in the case to support any of those pictures, it creates some sort of inference that there isn't a bit of evidence right now.

Mr. Hassan: Mr. Harrigan, I wish you would stand back so I can hear what you are saying, I don't think you are supposed to be having a private conversation up there.

By Mr. Harrigan:

page 1492 } Q. Now you took 1, 2, 3, 4, 5, 6 pictures of a gun on a rock, is that right?

A. Some of those are duplicates, some are enlargements of the others, there should be four, I believe.

Q. As a practical matter, that gun on the rock is there because a policeman put it there to start with, so it's a posed picture, isn't it.

A. No, it's not posed, I took the picture as I found it when I got there.

Q. You know the policeman put in on the rock there, don't you? That isn't where he found any gun?

A. You would have to ask him.

Q. You don't know that?

A. No.

Q. You just testified that one of these pictures reflects where he found the gun, didn't you.

Mr. Hassan: If Your Honor, please, that isn't what he testified to, he testified the officer was pointing to where he found it.

Mr. Harrigan: What he is saying, he doesn't know anything about it then?

Mr. Hassan: He isn't saying that Mr. Harrigan, that is what you said.

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page 1493 } Mr. Harrigan: So this is just a series of posed pictures of a gun on a rock, right.

Mr. Hassan: I am going to object to that, Your Honor, how does he know whether it was a posed picture or not? He knows what he saw and how it was when he got there.

The Court: He knows whether it was posed in his presence, overruled, let him answer the question.

The Witness: I asked him to be where he was, as I took the pictures.

Mr. Harrigan: This picture right here, 45R, what did you say that showed?

The Witness: He has his hand in the water indicating where he had found the pistol.

Mr. Harrigan: You know it wasn't on the rock, then, don't you?

The Witness: I don't know personally, I know from hearsay.

Mr. Harrigan: All right, I object to those, Your Honor, there's then six pictures and they basically all show the same thing. If they want to put one of them in for some reason or another, I don't object to that, but having series after series of close-ups and further close-ups and further close-ups of a gun on a rock, which wasn't there to start with, page 1494 } that a policeman put there, doesn't really add much.

The Court: Your objection there would go then to 45Q through 45T-2, those being the ones of the gun.

Mr. Harrigan: That's for the record, 45R, S-1, Q, 45S-2, 45T-1, 45T-2.

The Court: Now you stated two objections, the preceding one having to do with 1033 North Larrimore Street.

Mr. Harrigan: That's correct.

The Court: These concerning the gun.

Mr. Harrigan: What is the relevancy of the pictures of 1033 Larrimore Street and it's environs, also 1024 North Larrimore Street.

Mr. Hassan: If Your Honor please, the previous pictures that were shown of that address were shown in connection with the finding of the cap and coat, these pictures were taken a day later, they show first, the areas included in the previous pictures which are not all of the same areas, that there is no change from the 25th to the 26th, and secondly, this whole series of pictures is a photographic record of the flight area, and the search area that has been testified to, the search

that was made on the 25th, the search that was made on the 26th concurrent with these pictures in the area of flight from the eye witnesses who have testified throughout page 1495 } this case. It goes to the search up to the finding of the weapon and covers those areas in Bonair Park as well as in Dominion Hills, to which there has been testimony of activity by various witnesses, starting with the beginning of this case.

Mr. Harrigan: I would object, there isn't a scrap of evidence to indicate any area of flight in regard to these pictures other than by Mr. Hassan.

The Court: Does the testimony relating to the finding of the cap and the coat relate to that address, 1033 North Larimore?

Mr. Harrigan: But they do not relate to the area between the two addresses or to the rear of the two addresses which is shown by these photographs.

The Court: Is that the house—

Mr. Hassan: That is the house where the cap and coat were found by Mrs. Freeman on the property owned by the people next door. The pictures are of the hat and coat under the bush at the next address and they're both shown in the entrance between those houses to Arlington Mill Drive, to the park is what these pictures show.

The Court: In other words, the Commonwealth's theory is that these show a route of flight from the page 1496 } point where the hat and the coat were found to the point where the gun was found.

Mr. Hassan: And the area to which the officers testified that their search party went, the search party that started from the cap and the coat on the 25th, left, and went through this area, the search party on the 26th started at the shopping center, went on down through this area into the park.

The Court: I wouldn't think that documenting movements of the search party would have any relevance to the case.

Mr. Hassan: Only inasfar as it relates to the eye witnesses which give the course of flight, which were the basis for that search in that direction and we have the whole series of witnesses, Mrs. Burgess, Miss Middleton, Mrs. Thoburn, Mrs. Hall, the gentleman on the other corner, the gentleman on the dead end of Liberty Street, and Mrs. Freeman.

Mr. Harrigan: Most of them said he ran straight down Liberty into the park.

Mr. Hassan: The man who lived there and could see it, said he didn't, Your Honor.

The Court: It would seem to me that probably page 1497 } the route of flight involving this picture and address is relevant only if the hat and the coat are tied up with the defendant in some way and they haven't been yet, and for that reason, they aren't admitted into evidence.

The Commonwealth's theory apparently is that this is the route of flight, I will let them put these pictures in evidence if, subsequently, the hat and coat aren't connected up as I indicated earlier, we admitted photographs of them under a bush in front of a house, I will strike that and I will strike these, too, because I think that the Commonwealth will have to show some relevance to the case. They are entitled to try to do that and they are not through with their testimony yet, so I will admit these photographs conditionally, as the photographs were admitted conditionally concerning the hat and the coat in this location. This would be 45M through P.

Now, inasfar as your objection is concerned to the photographs of the gun, that is overruled, I think the Commonwealth is entitled to put in photographs from various angles and enlarge them, if that means six pictures, that is all right, that is Q through T-2, they will be admitted, M through P will be admitted conditionally subject to later connection as to relevancy involving the hat and the coat.

page 1498 } (The photographs previously identified as Commonwealth's Exhibits No. 45M, No. 45N, No. 45O, No. 45P, No. 45Q, No. 45R, No. 45S-1, No. 45S-2, No. 45T-1, and No. 45T-2 were received in evidence.)

Mr. Harrigan: Note my exception, Your Honor, that so far, there isn't a scrap of evidence in the record to indicate any course of flight purporting to be in the direction—

Mr. Hassan: I object to final argument, I also object to motions to strike which are all out of order.

Mr. Harrigan: I will put my exceptions in, if you don't mind.

For the further ground that even if there is no showing, they create an inference that somebody went a certain way, when it is just as reasonable and consistent he kept going right up Larrimore, he didn't go that way at all, or he wasn't even involved to start with and I think it creates an atmos-

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phere which could be prejudicial in that it could confuse and mislead the jury into believing perhaps some fact was proven, indicating that line of flight.

The Court: You have leave at the end of the page 1499 } Commonwealth's case, if they have not connected these up, to relevancy, to move to strike them out.

Mr. Harrigan: All right.

By Mr. Harrigan:

Q. Now, this Commonwealth's AA, is that part of the creek?

A. That is correct, this darkened area here, there's no way of lighting it at this point, the gun was thrown away in this darkened area (indicating).

Q. So that is below the bridge, is that right?

A. That's correct.

Q. Is this the road that goes over the bridge?

A. Yes, it is.

Q. What is that road made out of?

A. It is a black-top probably, a composition road of some type, it isn't a dirt road at this point.

Q. That is another picture of the same road?

A. Yes, it is.

Q. Now, in 45X, is that what purports to be the baseball field?

A. There's no baseball field outlined there, that I know of, that is where the children were playing in pictures taken before this.

page 1500 } Q. I will call it the baseball field. If that is incorrect, correct me. What do you call this big space here?

A. It is part of the park. I wouldn't call it a baseball field.

Q. What would you call this part of the park? Is this part of the park, what I call the baseball field, is that a picture taken on the field looking at the woods or something?

A. No, that is taken by the creek; the creek runs across.

Q. Where is the footbridge?

A. There is no footbridge. Apparently, they are going to build something there.

Q. As a matter of fact, there is a footbridge right down by the other side of this picture?

A. No, sir.

Q. That is not right?

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A. Not that I took pictures of.

Q. I didn't say that. I said beyond this picture, outside, this picture, on the other side there is a footbridge, isn't there?

A. There may be, I don't know.

Q. You didn't bother to take a picture of it, did you?

A. No.

Q. Now, there is the underside of that bridge,
page 1501 } I take it (indicating).

A. Yes, the bridge is in the background, this is what I call a spill-way where the water runs down there (indicating).

Q. That is all concrete, right?

A. It is a block-type effect, concrete.

Q. Now, did you take any pictures of any of the other areas in the park?

A. No, I did not.

Q. Why not?

A. I didn't think they were needed.

Q. How about the area that goes up toward Patrick Henry Drive?

A. No.

Q. Did you take any pictures of that area?

A. No, I did not.

Q. Who directed you in taking these pictures, where to go?

A. I followed the search team and took pictures as we went along.

Q. So you were directed to take pictures right behind these individuals?

A. More or less, yes.

Q. I would object to 45Y, no objection to 45X,
page 1502 } no objection to 45V, 45U is approximately the
same picture, but I guess—

Mr. Hassan: You already passed on that group, Your Honor, pictures 1 through 27 were the group that you just admitted.

The Court: No.

Mr. Harrigan: No.

The Court: I don't know about those, I have admitted M through T-2, he's just taken up just beyond that point.

Mr. Hassan: He's mixed up two groups on me, I'm sorry, I have tried to keep the groups taken on the 31st separate from those taken on the 26th, Your Honor.

Walter Shoup

Mr. Harrigan: No objection to 45K and 45W that shows the underside of the bridge.

Mr. Hassan: If Your Honor please, it does not, that is what Mr. Harrigan says and the witness, three times, says this is a spill-way with the bridge in the background. He's tried to say it is under the bridge and it isn't and there's been no testimony that it is except for his statements, three times now, he's said that was the underside of the bridge and three times the witness has said the bridge is in the background, it is a spill-way.

page 1503 } Mr. Harrigan: All right, it is a spill-way.

The Court: Do you have any objection to it?

Mr. Harrigan: No, Your Honor.

The Court: Do you mind if the jury examines some of these pictures while you are looking at them?

Mr. Harrigan: No, Your Honor.

The Court: Let them have these which have been admitted.

Mr. Hassan: He has no objection to these, you have not marked those, yet. Have you ruled, Your Honor, on 45A through 45T-2?

The Court: No, sir, I haven't ruled on A through L.

Mr. Harrigan: We have no objections on 45A, 45B no objection.

Mr. Hassan: On this group Your Honor, I would prefer they get them into numerical order because that is the sequence in which they are offered and that is the sequence which follows the testimony which has been previously given.

The Court: That's right, that is V through Z which goes down into the creek which goes along with the gun pictures that they have, let them have those.

Mr. Harrigan: 45C no objection, 45B what is page 1504 } this? D what is this? There is something white in the road and I asked him what it was.

The Witness: I would only have to guess it would be a piece of paper, blowing in the wind or something, it is nothing of importance.

Mr. Harrigan: No objection to 45B, 45F no objection, 45G I'd like to object as being apparently another picture of the sidewalk on Liberty Street, it doesn't show the road at all.

Mr. Hassan: You're okay on this one?

The Court: He objects to G, may I see it?

Mr. Hassan: There's two he's objecting to here Your Honor, I was keeping them in a separate pile to get those out of the way first.

The Court: All right, that is AA he's objected to.

You object to D and K, is that right, sir?

Mr. Harrigan: Yes, sir, on the grounds that they just show a sidewalk, on the grounds that if they're going to show pictures of Liberty Street, then they ought to show pictures of the street that everybody can see instead of picking out isolated spots and taking pictures where it hasn't been shown there's any particular relevance.

page 1505 } Mr. Hassan: Do you want to wait until he gets through, Your Honor, and then I will take them up individually?

The Court: All right, I will hold these in a separate pile.

Mr. Harrigan: No objection to 45H, 45I seems to be a pretty fair picture, J is all right.

The Court: That should leave only L and then you get to the double letters.

You indicated an objection to K, I think, didn't you?

Mr. Harrigan: Yes, Your Honor.

The Court: Now that takes care of everything but the double letters. Now, you have stated your objections on K and G, Mr. Harrigan?

Mr. Hassan: And AA, there were three pictures.

The Court: AA also, what do you have to say, Mr. Hassan, about the relevancy of it?

Mr. Hassan: G is picture No. 7, it follows the picture that shows north through the intersection of 9th Road and North Liberty Street from 907 North Liberty and G picks up north on the west curb of North Liberty Street from the fire plug to the northwest corner of North 9th Road and North Liberty

page 1506 } Street, then H picks up from in front of 935 North Liberty Street and shows across the street which is a point where we have had testimony about an egg truck and this is part of the series which just completes the entire course that was described by our witnesses.

K is picture No. 11 which is the second picture after you leave 935 North Liberty, 10 was north on the east curb of North Liberty where the witness said that the man who was fleeing in travel, and K just carries it from there down to North Larrimore Street, K also shows the dead end of Liberty Street into the park which was described by three witnesses, with that white rail fence at the end of the street, I think they are a part of the whole picture and are necessary to carry it on. Then, the next picture is picture No. 27 which

is the creek bed below the point where the gun was found and the spill-way which is below the bridge.

The Court: That is AA?

Mr. Hassan: That is AA, which is No. 27.

The Court: As far as these may tend to show the route followed by the assailant, I will admit them, I am not certain, of course, that the evidence will, indeed, develop that this is the route, but the Commonwealth's theory of the case, evidently, is that that was the route and these are illustrative of it. I think they are entitled to try to prove it.

page 1507 } They have here the photographer who says it accurately represents the scene he saw so I will admit these and overrule the objection.

Mr. Harrigan: Exception.

(The photographs previously identified as Commonwealth's Exhibits No. 45A, No. 45B, No. 45C, No. 45D, No. 45E, No. 45F, No. 45G, No. 45H, No. 45I, No. 45J, No. 45K, No. 45L, No. 45U, No. 45V, No. 45W, No. 45X, No. 45Y, No. 45Z, and No. 45AA were received in evidence.)

Mr. Hassan: There's now one, one more group of pictures, the group that was taken on August the 31st.

Mr. Harrigan: 45BB, no objection, 45CC just shows the same shot on a different angle, I object to 45FF which, apparently, is the back of the house on Larrimore Street and the lawn and it doesn't show anything else, 45GG, I object to that, it shows somebody's car in the driveway which has no evidence to support that picture, 45EE—

The Court: The south end of the bridge, evidently.

Mr. Harrigan: 45FE, I don't know what that page 1508 } shows.

The Court: My notes say it is supposed to show the south end of the bridge looking toward the creek bed, or maybe it was taken from the south end of the bridge looking into the creek bed.

Mr. Hassan: No, I think that is not the creek, what is the number?

Mr. Harrigan: 45EE.

Mr. Hassan: That is north up the creek bed from Four Mile Run Creek, not looking south.

The Court: But shot from the south end of the bridge?

Mr. Hassan: No, sir, it is shot from Four Mile Run Creek.

The Court: It is picture No. 31.

Mr. Hassan: Picture No. 31, north, it looks north up the creek bed from Four Mile Run Creek and it is up Allison Stream, I think they call it.

The Court: That is the tributary?

Mr. Hassan: Yes.

Mr. Harrigan: 45DD shows the playground.

Mr. Hassan: 45DD shows the bridge and the southwest, showing the tables and swings in the foreground.

The Court: Mr. Harrigan, with that explanation, do you object to 45EE, which is a picture of the stream looking up the tributary stream from Four Mile Run, evidently?

Mr. Harrigan: I would object to it on the grounds of relevancy, Your Honor, unless it is shown that is a significant picture of the stream and the bushes.

The Court: All right, DD is the playground and bridge, do you object to that?

Mr. Harrigan: The same objection, relevancy.

The Court: The pictures of the areas of the stream and the bridge where the gun was found, I think have some relevancy and I will overrule those objections and admit BB, CC, DD, and EE, but I do not know what the relevancy of FF and GG are so I will let Mr. Hassan tell me.

(The photographs previously identified as Commonwealth's Exhibits No. 45BB, No. 45CC, No. 45DD, and No. 45EE were received in evidence.)

Mr. Hassan: FF and GG?

The Court: Yes, the last two shots, they're apparently where he went back in to fill in some gaps, according to his testimony.

Mr. Hassan: FF is the rear of the west side of 6022 North 9th Street, which was taken from the bridge wall behind the shopping center and it supplements picture No. B and shows an area that was not covered in B and C and comes in between B and C, which were the pictures of the rear yard of 6015 Wilson, from the rear yard of 6022 North 9th Street, and the picture from the driveway of 6022 North 9th Street east to North Liberty Street.

GG was a picture of that driveway, 6022 North 9th, from the southwest corner of the house to 9th Street with 9th Street in the background. That is in the same area where

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there was apparently not a complete picture established on the 26th of what this area behind the shopping center looked like, it's two additional shots covering areas not covered by B and C.

The Court: Does that relate to some testimony in this case?

Mr. Hassan: It relates to the testimony of Mrs. Burgess and to the testimony of Rebecca Middleton and Mrs. Rochford, Mrs. Rochford, Miss Middleton, and Mrs. Burgess. Mrs. Rochford and Miss Middleton did not testify to anything from the direction of 6022, but Mrs. Kilpatrick talked from the other side of the wall and didn't describe this back yard,

page 1511 } Mrs. Burgess, however, did describe her yard
pictures of that area.

The Court: All right.

Mr. Harrigan: They were taken on the 31st of August, however, which is a little remote from the 25th.

The Court: For the purpose only of showing the photographic situation, I will admit them and overrule the objection.

(The photographs previously identified as Commonwealth's Exhibits No. 45FF and No. 45GG were received in evidence.)

Mr. Hassan: May I proceed with my questioning? There are three or four routine questions.

Sergeant Shoup, did you take any more pictures in connection with this case that you have not testified to?

The Witness: I took pictures of an area on Wilson Boulevard.

Mr. Hassan: Did you not testify that these were not the pictures introduced in evidence at the time you were last on the stand?

The Witness: I did not testify to those.

The Court: I think they were put in evidence through Inspector Cole.

page 1512 } Mr. Hassan: I am sorry, I thought I had Sergeant Shoup on the stand previously.

I will show you Commonwealth's Exhibit No. 9A through 9H and ask you to examine those and tell us whether or not those are pictures which you took?

Mr. Harrigan: I think they are already in evidence.

Mr. Hassan: They are already in evidence?

Walter Shoup

The Witness: Yes, I took those pictures.

Mr. Hassan: Are there any other pictures which you took in connection with this case, other than those you have already examined and testified to on the stand?

The Witness: There should be no others, I think we have got them all in, there are so many I am confused, but I have no more pictures on it.

Mr. Hassan: Now, is there any evidence which you handled in this case, which you have not testified about?

The Witness: I was with Detective Crickenberger when we picked up evidence, but he did all the handling and so forth of it.

Mr. Hassan: Now, is there anything else that you have got in connection with this investigation that you have not been asked about?

The Witness: There shouldn't be.

page 1513 } Mr. Hassan: Thank you, no further questions.
The Court: Mr. Harrigan, do you have any cross-examination?

CROSS-EXAMINATION

By Mr. Harrigan:

Q. Were you up on the roof taking some pictures?

A. No.

Q. You weren't?

A. No.

Q. You were never up there?

A. No, I wasn't.

Q. Now, there were other areas that were searched in the park, weren't they?

A. We walked around quite a bit through the park, yes.

Q. Why didn't you take some pictures of the whole area so everybody could understand what the whole area looked like, instead of following this little beeline that you were directed to follow?

A. We would have had pictures sticking out of our ears, I believe, if we had.

Q. You've got them sticking out of your ears now.

Mr. Hassan: I object to that remark, Your Honor.

The Court: Sustained.

page 1514 } Mr. Harrigan: Is that the reason?

Walter Shoup

Mr. Hassan: I am going to object to it, you have sustained it and now he is going to ask the reason.

Mr. Harrigan: No, that is a different question, are you objecting to my remark or his remark?

Mr. Hassan: I am objecting to your remark.

The Court: I don't think that is going to be a very productive line, Mr. Harrigan, he was directed to take pictures while following this particular search party and that is what he did, I think it is rather fruitless to ask him why he didn't do something else, he followed his instructions, presumably.

Mr. Harrigan: Your Honor, I think the jury has a right to know that there are other areas in this case which were in conflict and for some reason or other, there's no pictures of those areas.

The Court: If you can establish there were other areas, go ahead, I wouldn't cut off your cross-examination, I won't argue with you.

By Mr. Harrigan:

Q. Did you take some pictures of a dog?

A. A dog?

Q. That's right.

page 1515 } A. No.

Q. You didn't?

A. No.

Q. How about the other side of the building, did you get over there and look at that by the Seven-Eleven?

A. I was never at the scene, itself.

Q. The pictures are right at the scene, you have to be there.

A. I was behind the scene, that is the closest I got to it.

Q. Why didn't you take some shots of the dead end of Liberty Street?

Mr. Hassan: If Your Honor please, he's already asked him that question, he says he has a shot of the dead end of Liberty Street.

The Court: Sustained, I saw one there.

Mr. Harrigan: All right, I don't have any other questions.

Mr. Hassan: No further questions of this witness.

The Court: May he be excused?

Sergeant Shoup, you are excused.

The Sheriff: If it please Your Honor, someone has a question in the jury.

page 1516 } A Juror: May we have the identification of 45L, we have forgotten what it was?

Alvin Fuchsman

The Court: 45L, my notation says it was taken from the southwest corner of Liberty and Larrimore, looking east on Larrimore.

A Juror: Thank you.

The Court: All right, sir.

(Witness excused.)

Mr. Hassan: I'd like to have a recess when the jury finishes looking at the pictures, there will have to be some equipment set up for my next witness.

The Court: Let him set that up now.

Mr. Hassan: Lieutenant Fuchsman, you can test that out while we are on the recess.

The Court: Yes, I just wanted you to get it set up now.

Let the jury retire for a recess.

Court will recess for five minutes.

(Whereupon, a short recess was taken.)

The Court: Who is your next witness?

Mr. Hassan: Lieutenant Fuchsman.

Whereupon, ALVIN FUCHSMAN, was called page 1517 } as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Lieutenant Alvin Fuchsman, Police Lieutenant, Arlington County Police.

Q. What are your duties in the police department?

A. I am in charge of communications in the records bureau.

Q. Did there come a time when you made a tape recording of the radio activities on the 25th day of August, 1967, from noon on?

A. There was a recording made, yes, I didn't make it personally, it was done on the machine.

Q. You are in charge of the records in that department?

A. Yes, sir.

Alvin Fuchsman

Q. Are such recordings made twenty-four hours a day?

A. Yes, sir.

Q. Have you brought those recordings with you?

A. I have.

page 1518 } Q. There are certain signals which are given,
are those under orders of the Department, such
as ten four?

A. Yes, sir, that is correct.

Q. What does ten four mean?

A. Ten four means okay.

Q. That means you have received the communication?

A. Right.

Q. What does ten seven mean?

A. Ten seven means a unit is going out of service.

Q. That is at the scene of the call.

A. Yes, well, anywhere when they go out of service, they
go ten seven.

Q. As it relates to this, what does ten eight mean?

A. Going back in service.

Q. What is the type of designation that the various vehicles will be responding to during this recording? What other type of designations do they have?

A. We have a scout which would be the uniformed patrol cars, we have cruisers which indicate the men in plain clothes, there will be motors which will be the motorcycle officers, and the ID unit which would be the men from our fingerprinting and photography unit.

Q. What number do they have?

page 1519 } A. Cruisers, 302.

Q. Now, do the supervisors of a special section have numbers?

A. Yes, they do.

Q. Who was 71?

A. Scout 71 would be Inspector Cole.

Q. Who is 76?

A. Scout 76 would be whichever sergeant happened to be on duty at that time, I believe it would be Sergeant Moehler, in this case.

Q. Is there a different designation in uniformed cars between the marked uniform cars and the unmarked uniform cars?

A. The unmarked uniformed cars would be unit 1, unit 2,

Alvin Fuchsman

and so forth, the marked cars would be by beat number so scout 51 would be the unit covering 51 beat.

Q. Then periodically, are there time signals given?

A. Yes, there are.

Q. Do they usually occur as ten four, 12:01?

A. That is general sequence, yes, sir.

Q. There's a ten four by the dispatcher, there is usually a time marking on the tape.

A. That's correct.

Q. Do you have the tape with you?

page 1520 } A. Yes, I do.

Q. I'd like to have you play that for the Court and the jury, that will be just the tape of the broadcast, I don't want to get confused between phone calls.

A. I'm just backing the tape up now.

(Whereupon, the tape was played.)

The Court: Mr. Hassan, do you wish to go any further on this tape?

Mr. Hassan: I do, Your Honor, I want to go at least as far as the defendant being brought to the station, even further.

The Court: That will take some time, what we have heard now is down to the time of apprehension at Harrison Street, isn't it?

Mr. Morris: 12:28.

Mr. Hassan: We haven't quite reached 12:28 yet, have we?

Mr. Harrigan: He already said 12:28.

Mr. Morris: Maybe the court reporter got that, do you have 12:28?

The Reporter: "12:28," yes.

The Court: Court will recess until 2:00 o'clock.

(Whereupon, the luncheon recess was taken.)

AFTERNOON SESSION

page 1521 } The Court: Are you ready for the jury?

(In the presence of the jury.)

The Court: Do you want to resume with the tape, Mr. Hassan?

Alvin Fuchsman

Mr. Hassan: Yes, resume with the tape.

The Court: All right, sir, will you go ahead?

(Whereupon, the playing of the tape was resumed.)

Mr. Hassan: That will be enough.

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Lieutenant Fuchsman, do you also record telephone calls to the police department?

A. Yes, sir.

Q. Will you please locate that on the proper channel and place the tape for the initial calls to the police department?

Mr. Harrigan: Objection.

The Court: Mr. Harrigan, you have objected on the grounds of hearsay.

Mr. Harrigan: Yes, Your Honor.

The Court: Mr. Hassan.

Mr. Hassan: If Your Honor please, the dispatchers in the police department don't dream something up, page 1522 } they do things because of what they see or hear, I think the jury is entitled to know what they heard that started this long chain of recording and they came by telephone call.

The Court: Are the callers identified, Mr. Hassan?

Mr. Hassan: I believe there are two callers who are identified and one caller who is not, the unidentified caller is a woman and one is a man that called twice.

Mr. Harrigan: If we are going to argue this, Your Honor, I would just as soon argue it outside of the presence of the jury.

Mr. Hassan: I don't consider that argument, that is the answer to the Judge's question.

The Court: Do you want to be heard on it?

Mr. Harrigan: I don't think I really have to be heard, I have an objection and I have stated my grounds.

The Court: It would appear to me that utterances of bystanders immediately at the scene would be part of *res gestae*, I would think it would be necessary to have some identification of who they are and, of course, the further away from the scene you get, the less of that there is to it.

Alvin Fuchsman

Mr. Hassan, can you tell me if these are utterances that are made right at the scene, does it go on for some period of time?

page 1523 } Mr. Hassan: No, it only goes on for the first couple of minutes, there's two phone calls from, I think, Tom Blakeney, the barber, one from Hancock, one from an unidentified woman.

Mr. Harrigan: I object, it's either admissible or it isn't admissible, if we are going to tell somebody what it's all about—

Mr. Hassan: We have already had the testimony, Your Honor, the witnesses have testified.

The Court: I want to know what is covered by this in order that I can rule on it intelligently, I will let the telephone calls be presented on the basis that they are immediately relayed within a few minutes of the occurrence and by bystanders at the scene, I gather we can tell from the tape how far away in time we are getting, and if it extends any substantial distance away from the occurrence, it will not be *res gestae* and the objection is sustained.

Mr. Hassan: One of these calls is from Thomas Blakeney after talking to Warren Goodlett.

Mr. Harrigan: This is just what I object to.

Mr. Hassan: Both of whom have testified.

Mr. Harrigan: I have an objection, may I have a ruling on it, Your Honor?

The Court: The objection is overruled.
page 1524 } Mr. Harrigan: Exception.

Mr. Hassan: As far as I know, the only thing that will come out of here that hasn't been testified to is an unidentified woman from the beauty shop, we think we talked to her, but she won't admit it.

Mr. Harrigan: I object to that, too.

The Court: The objection is sustained.

Mr. Hassan, can you tell me what time span you propose to cover here?

Mr. Hassan: I think it is 12:02 to 12:04, the outside four minutes, I believe, on the first calls, and it can't be much over that.

The Court: Go ahead, sir.

Mr. Harrigan: Note my exception on the ground *res gestae* requires an utterance that does not have time for recollection, a telephone call, obviously, does.

Alvin Fuchsman

(Whereupon, the tape was played.)

The Witness: Now, I have to go back because the other one is on another channel and it overlaps.

The Court: Now, Lieutenant, when you say it overlaps, does that mean it came in at the same time?

The Witness: Yes, sir, we record on five different channels, so if there are three phone calls, they will all page 1525 } be recorded at exactly the same time.

We have the lady calling at the same time and another man about a minute later so their conversations overlap on a tape.

The Court: Okay.

(Whereupon, the tape was played.)

The Witness: He just hung up then.

The Court: Is that all you have?

The Witness: There's one other call that I have recorded.

The Court: All right, how close is it in time to those two?

The Witness: Probably within two or three minutes.

The Court: Okay, go ahead.

Mr. Hassan: This is the phone call he testified to that he made from the phone.

Mr. Harrigan: Your Honor, if we are going to have the phone calls in, let's have the tape tell us what they're about, instead of having a preview on everything that comes in.

Mr. Hassan: This is no preview, Your Honor, this came in by direct evidence.

Mr. Harrigan: This is what I object to.

page 1526 } Mr. Hassan: I don't think he wants me to open my mouth.

The Court: Gentlemen, the objection is overruled, I asked Mr. Hassan what span of time is covered, he explained it, he may have said more than he had to to answer my question, that was the purpose of it, he didn't say what the content of the conversation was, so there's nothing objectionable in it.

Mr. Harrigan: Exception.

(Whereupon, the tape was played.)

The Court: Is that the end?

Mr. Hassan: Yes.

Now, Lieutenant, if you will have a seat up there, please.

Alvin Fuchsman

Did there come a time on the 25th of August—
Mr. Harrigan: May we approach the bench, Your Honor?

* * * * *

Conf.
11/28/67
page 4 }

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Mr. Harrigan: On the basis of our objection to the telephone conversations coming in and on the basis of the *res gestae*, it is apparent that the telephone call, especially the last one was not *res gestae*. It was based almost entirely on second hearsay, upon hearsay, in talking to other individuals. Therefore, we move for a mistrial.

Mr. Hassan: The Commonwealth's response is fantastic.

The Court: The telephone call was entirely corroborative of the witness himself who has testified and, thus, introduced no new matter. No new matter has been introduced through these telephone calls that was not already in evidence from the direct testimony of the witnesses. Those recordings were contemporaneous of their calls and would seem

to me to be harmless for the defendant, but in addition to that, the telephone call was made by a man 11/28/67 who was out of breath, obviously engaged in page 5 } suit, within one or two minutes after the shooting occurred, which seems to me to make it a part of the *res gestae*. Although the identity of the caller has not, in all cases, been established within the call itself, other evidence appears to establish who it was, so it seems to me to be part of the continuing event and, thus, admissible on that ground, but the exception is noted.

The motion for mistrial is overruled.

Mr. Harrigan: Exception.

By Mr. Hassan:

Q. Lieutenant Fuchsman, directing your attention to on or about the 25th day of August, did there come a time when you responded to the six thousand block of Wilson Boulevard?

A. On the following day?

page 1527 } Q. On the 25th, you did not?

A. No, sir.

Alvin Fuchsman

Q. Directing your attention to the 26th, did you respond there?

A. Yes, I did.

Q. When you arrived there, what did you do, if anything?

A. Well, actually, I was there twice, I was responding from home in the first instance, I was called from the apartment the night before, I was on leave when I came in. I went to the Seven Eleven store at the shopping center, more or less to find out what was going on and there's a brick wall on the west side in the rear of the Seven Eleven store and it seemed like the only way of getting up on the roof, to gain access to the roof, so I climbed the wall on top of it, and it was still a little too high to get on the roof of the Seven Eleven store from the brick wall, so I went back to my car and got a little step stool that I have, which is about eighteen inches high and I got on top of that and was able to get on the roof.

Q. What time of the day or night was this?

A. Approximately 8:00 o'clock in the morning.

Q. 8:00 o'clock in the morning?

page 1528 } A. Yes, sir.

Q. What did you do on the roof?

A. Mainly, looked around to see what there was to see, so I'd be familiar with it to come back with the search team.

Q. Did you wear hip boots at this time?

A. No, sir.

Q. Did you look all over that roof?

A. Yes, sir.

Q. Did you get wet?

A. Yes, I did.

Q. How wet did you get?

A. I had tennis shoes on and they were quite wet by the time I finished.

Q. Did there come a time when you responded?

A. Yes, sir.

Q. What did you do at that time?

A. I responded with Officer Taylor, I believe Detective Davis, I don't recall who the other detective was, but we had come as a team to the area of the crime scene to search for whatever we could find, either a weapon or other evidence that might be available.

Q. Officer Taylor and you went again to the roof of the building?

page 1529 } A. We also took measurements to maybe subsequently make sketches if they would be needed.

Alvin Fuchsman

Q. Did you measure the wall on the west end of the building?

A. Behind the Seven Eleven store?

Q. Behind the Seven Eleven store.

A. No, sir, I did not.

Q. Did you measure the building?

A. The width of the building, yes, from the roof, I wasn't able to get, say the height.

Q. You measured the width of the building and the height of the building?

A. Right.

Q. From the roof or from the ground?

A. From the roof.

Q. What are the measurements of that shopping center?

A. May I consult my notes?

Q. Have you got your notes there that you made?

A. Yes, I do.

Q. Okay.

A. Actually, I have them broken down by sections, I don't have an adding machine to be able to add them up at this time, but roughly, it's about in the neighborhood page 1530 } of about 250, 300 feet.

Q. How many units are there?

A. Eleven.

Q. That is the length of the building along Wilson Boulevard?

A. Yes, sir.

Q. What is the depth?

A. Sixty feet.

Q. Did you measure the wall at the east end of that portion.

A. I did.

Q. What are the measurements of that wall?

A. The wall is 72 feet, 6 inches in length, it's a brick wall and it's five foot one and a half inches high.

Q. Is it a straight wall, or does it turn?

A. It goes straight to the building line and then there is another wall butting along to it at a right angle, I did not measure that.

Q. You did not measure the other wall that runs from Wilson Boulevard to the rear of the store property line?

A. No, sir.

Q. Now, did you take any other measurements at the scene?

A. There were measurements taken on, I

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page 1531 } guess you would say, the southeast end of the
building where it was indicated to by Mrs.
Burgess—

Mr. Harrigan: Objection.

The Court: Sustained.

The Witness: There was a tar smear on the back of the building that I measured.

By Mr. Hassan:

Q. What was the size of that smear?

A. The smear was roughly about the size of a dime, it was two foot, three inches down from the top of the roof, there was also another tar smear, there was an electrical cable running around the corner of the building, there was a tar smear on that cable and the cable bracket which was holding the cable had been bent down, that cable was ten foot from the floor or from the ground level.

Q. From the ground level. How far was it from the top of the wall?

A. I didn't measure that, I could subtract it simply from the measurements I have, the wall was five foot, one and a half inches, and this was ten foot from the ground, so I would say about four and a half feet from the top of the wall.

Q. Did you take any other measurements at page 1532 } the scene?

A. I took measurements of a sign that was the Econo-Wash sign, it's on 6029.

Q. What does that measure?

A. Well, there are several measurements because it's kind of a stacked type of sign, the top stack is six feet long, one piece on top of another, one which is eleven feet long, I am sorry, I don't have the height of it.

Q. Did you do anything else at the scene?

A. Well, other than searching, no, sir, and taking the measurements.

Q. Did there come a time when you responded to the bridge where the gun was found?

A. Yes, there was.

Q. Did you take measurements there?

A. I did.

Q. Tell us what measurements you took.

A. Well, there were actually two measurements involved here, the bridge, itself, and the opening underneath of it

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which extends down to the spill-way. The opening was six foot wide and from the water level to the bottom of the support to the bridge, it was four foot, five inches, then there's a nine-inch wide support at the top of the opening which supports the whole bridge structure, there is also
page 1533 } a railing which extends three foot above the height of the bridge or the base of the bridge, the width of the bridge is eleven foot, eight inches, the length of the bridge is eight foot, six inches.

Q. Did you take any other measurements?

A. Not at the scene of the bridge, no, sir.

Q. Did you take any other measurements besides at the scene and at the bridge?

A. I took measurements at the car, the holes that were the windshield.

Q. Did you take any other measurements?

A. No, sir.

Q. I have no further questions of this witness, Your Honor.

CROSS-EXAMINATION

By Mr. Harrigan:

Q. May I see the paper that you are reading from?

I take it you climbed up on the roof from the Seven Eleven side, is that right?

A. The first time I responded, yes.

Q. Would you come down here and draw, basically, the set-up on the Seven Eleven side where you climbed up?

Draw Wilson Boulevard. Now the front of the store, draw the Seven Eleven in.

page 1534 } Now, what is down here? Draw the rest of the store down here (indicating).

A. There were eleven of them all the way down (indicating).

Q. Now, the Seven Eleven store is as wide as all the rest of them?

A. A little bit wider, so it goes back even further.

The Court: You are talking about width or depth?

Mr. Harrigan: Depth.

By Mr. Harrigan:

Q. The depth is the same from this point to the front to the back (indicating)?

Alvin Fuchsman

A. Yes, sir.

Q. Where is the wall that comes in by the Seven Eleven, draw that in.

A. The one that I climbed was approximately here (indicating) and then there is another wall going along the building here (indicating), and this is along the building line (indicating) and this is the parking area (indicating).

Q. Does this come back in deeper than that, or how far is it from the Seven Eleven back to this wall (indicating), do you know that?

A. There is a little sidewalk that goes under the canopy on the Seven Eleven store and I would say, roughly, page 1535 } maybe two or three feet back or maybe a little more.

Q. You say that wall is only two or three feet back of that sidewalk?

A. As I recall.

Q. What is right here in this area (indicating)?

A. Well, these are the back yards of the houses facing onto 9th Street (indicating).

Q. Is there a tree here (indicating)?

A. I believe there is a tree there (indicating).

Q. It hangs over the roofs, doesn't it?

A. Yes.

Q. How high is this wall (indicating)?

A. Well, it isn't too high, actually, on the parking lot side, it came to about chest high on me, on the back yard side, it drops down two or three feet, it is a little higher on the parking lot side.

Q. Now, if you stand on this wall, can you reach the roof, could you?

A. I could reach it, but I wasn't able to climb it, I had to get something else to stand on to get on top of it.

Q. You said you needed a stool that was eighteen inches taller?

A. Yes, sir.

page 1536 } Q. With that eighteen-inch stool, you climbed up on top of the roof?

A. Yes, sir.

Q. What was in here (indicating)?

A. There was a trash bin about right here and I think the rest was just parking area (indicating).

Q. Are there any milk crates or cartons or anything back there that you can use to step on?

Alvin Fuchsman

A. I don't recall, but I would say probably not, or I wouldn't have gotten the little step-stool out of my car, there is a little trash bin here (indicating) where they dump their trash for a whole week before they pick it up.

Q. Did you have any trouble getting on the roof with the little step-stool?

A. It wasn't easy, climbing the wall, I still had to step up or sort of hop up to get on the wall.

Q. How high is this roof by the wall, this comes right up to the butt of the building?

A. Yes, sir.

Q. How high is it, about your height?

A. From the top of the brick wall to the roof?

Q. To the roof.

A. Not quite that high, I would say it is about
page 1537 } shoulder, maybe a little higher, probably a little
higher than I am.

Q. How did you get down?

A. I climbed back down the same way I went up.

Q. Over here (indicating)?

A. Yes, sir.

Q. Back down on the wall?

A. Right.

Q. On your stool?

A. And back down on the ground.

Q. Could you have jumped from the roof, hit that wall without much difficulty?

A. I wouldn't want to try it because this other job over here on the other side, I would be a little frightened to take a jump, yes, it could be done, I suppose.

Q. Now, you say that this wall here on this side was deeper than on this side (indicating).

A. Yes, sir.

Q. The parking lot is built up a little bit?

A. Yes, sir.

Q. This is about three feet deeper on this side (indicating)?

A. That is right.

Q. Does this wall run deeper all the way around through there, do you know?

page 1538 } A. I don't recall, as I recall, it seems like it
was on an angle also, rather than just straight,
I think there was an angle to it and I didn't look over in this
area.

Alvin Fuchsman

Q. If you were standing here (indicating), you couldn't see anybody standing behind this wall, could you?

A. Probably not, not if they were leaning up against the wall.

Q. Did you notice the gutter here (indicating), was there a gutter on the building?

A. Yes, sir.

Q. Was it solid or was it loose?

A. As I recall, it was rusted, I think it was away from the building.

Q. Was it loose?

A. I don't recall, I do recall that I didn't use it to pull myself up on.

Q. Now, do you remember whether it was broken away from the building?

A. No, I don't, all I recall was the rust.

Q. All right, now when you went up there and looked around, did you see any foot prints?

A. No, sir.

Q. You didn't see any at all?

A. No, sir.

Q. What day did you go up there?

A. This was on Saturday.

Q. What time?

A. Between 7:30 and 8:00 o'clock, it was early in the morning.

Q. Now, were you detailed down there or did you just go down by yourself?

A. As I say, they called me from the police headquarters the night before, around 11:00 o'clock and asked me to come in and form a search party, so on my way down there, I stopped off, this first time and then I went back later with a team to search again.

Q. Now, that apple tree that was in that corner, was that a big tree?

A. As I recall, yes.

Q. Were there a lot of apples on it?

A. Yes, sir, and a lot of hornets, also.

Q. Did you pick up one of the apples?

A. No, sir.

Q. Now, was that wall where you went up the easiest place all around the building to get on that roof?

A. At that point, yes, I didn't have a ladder.

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page 1540 } the only thing I had was the brick wall which
would give some access to the roof.

The Court: That wasn't the question, Lieutenant. He wanted to know if that was the easiest place to get up on the entire building.

The Witness: Without a ladder, yes.

By Mr. Harrigan:

Q. Did you notice any air conditioning equipment that was hanging by the Seven Eleven on that side of the building?

A. Hanging?

Q. That was right by the side of the building, protruding out.

A. I don't recall, I do recall there were several air conditioning units along the whole length of the building, but I don't recall any in that spot.

Q. Do you recall a door on that side of the building, on the back of the building, before the Seven Eleven?

A. No, sir, I don't.

Q. Now, this trash container that was there, how big was that, did you measure that?

A. Roughly, I'd say, four foot high and maybe six foot long, a large container.

Q. Did you measure it?

page 1541 } A. No, that is just my estimation.

Q. Was that one of these removal containers?

A. Yes, sir.

Q. Where the trucks pick them up and dump them?

A. Yes, sir.

Q. Where was that in relation to this corner of the Seven Eleven and the roof?

A. It was actually up against the brick wall, I'd say back from the building, maybe ten feet.

Q. Now, when you measured down there, did you do your measuring that morning?

A. Yes, sir.

Q. Did you measure the distance from the ground to the top of the roof at the Seven Eleven?

A. Not the Seven Eleven portion, at the other end of the shopping center, the south end of it.

Q. You didn't measure the north end of it where you went up and down?

A. No, sir.

Alvin Fuchsman

Q. Did you have some sort of a tape for your measurements?

A. I did.

Q. A six-foot tape?

A. No, it's a hundred-foot tape that we use in page 1542 } the police department, it's a cloth tape.

Q. Was somebody helping you with the tape?

A. Officer Taylor.

Q. That was in the morning?

A. On the second trip that I came back on, yes, sir, I was by myself the first time.

Q. You didn't take measurements the first time?

A. No, sir.

Q. Then Taylor told you where to take measurements?

A. No, sir.

Q. I don't have any further questions.

The Court: Any further questions, Mr. Hassan?

Mr. Hassan: No further questions.

The Court: May he be excused?

Mr. Hassan: Yes, sir.

The Court: Lieutenant, you are excused now.

(Witness excused.)

Mr. Hassan: May we have a five-minute recess?

The Court: All right, I don't want to have a long one.

Mr. Hassan: Just five minutes.

The Court: Let the jury retire, Court will recess for five minutes.

page 1543 } (Whereupon, a short recess was taken.)

Mr. Harrigan: Before the jury comes in, Your Honor, we would like to renew our motion, as I understand now, Mr. Hassan is about ready to put on the testimony from Highland County. We renew our motion to exclude that evidence based on the illegal search for the reasons stated and the other testimony that has come in during the course of the trial from Pever. Mr. Patler wasn't under arrest and the evidence shows that the warrant wasn't obtained until sometime after 3:00 o'clock.

Further, we would move not to allow that evidence because there is no foundation at this time to connect it in with John

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Patler, himself, and that if that connection is made, the impact of that evidence would be so prejudicial that an instruction to the jury would not be sufficient to erase it from their minds.

The only testimony regarding the farm at all so far has been testimony from Mr. Miller, who testified that he was painting fences and he wasn't sure of the time and John was target practicing down there. He didn't know whether it was a shotgun or a pistol, there was no testimony where he was target practicing or anything.

So we believe there is no foundation at this page 1544 } point for that testimony and for the other reasons based on illegal search and the fruit of that search should not be admitted.

The Court: On the grounds that were asserted for the motion to suppress, the motion is again denied, on the same basis, however, as to the necessity for the Commonwealth to connect this evidence up that also does rest upon the Commonwealth and it will be necessary for them to do that, if they don't do it, it will be stricken, but they will have the opportunity to proceed in what ever order they like as to doing it and the motion is denied.

Mr. Harrigan: Exception for the reasons stated and for the reasons previously argued in the motion to suppress.

(In the presence of the jury.)

Mr. Hassan: Inspector Bradley.

Whereupon, C. L. BRADLEY, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

page 1545 } A. C. L. Bradley, Investigator, Virginia State Police.

Q. Where is your duty station?

A. I work out of the Salem Division, which is the Sixth Division, State Police.

C. L. Bradley

Q. Did there come a time when you had occasion to go to McDowell, Virginia, in connection with this case?

A. Yes.

Q. When was that?

A. It was on September the 16th of this year.

Q. Who was with you?

A. Trooper Kelly, and Detectives Crickenberger and Eagle from Arlington County.

Q. You went to McDowell, Virginia, what place did you go to?

A. We went to Mr. Sam Ervin's home.

Q. Where is that located in Highland County?

A. It is located approximately ten miles south of McDowell, on State Route 678.

Q. Did you see anyone there?

A. Yes, sir.

Q. Who did you see?

A. We saw Tom Miller.

Q. Did there come a time when you and the
page 1546 } other officers had occasion to go into a meadow
or field?

A. Yes, sir.

Q. What was the reason you did that?

Mr. Harrigan: Objection, Your Honor.

The Court: You are anticipating some hearsay?

Mr. Harrigan: Yes, Your Honor.

The Court: Don't tell us what anyone told you, you can say what your purpose was, but not what you were told, go ahead.

By Mr. Hassan:

Q. What was your reason for going into that field or meadow?

A. To see if we could find any ammunition or slugs that had been fired from a weapon.

Q. Did there come a time when you did locate any slugs or casings from any target shooting?

A. Yes, sir.

Q. Where did you locate the slugs?

A. We found four slugs in an oak tree.

Q. What else did you find?

A. We found three empty cartridge cases in the pasture field.

C. L. Bradley

Q. Where were they located in the pasture
page 1547 } field with relation to the tree?

A. They were straight out from the tree, one of them was approximately twenty-five feet and one approximately fifty feet, and one approximately seventy-five feet.

Q. What did you do with these?

A. I marked them and gave them to Detective Crickenberger.

Q. Did you mark the slugs as well as the casing?

A. Yes.

Q. I would like to have property Number 24016.

I'd like to have this marked Your Honor, Commonwealth's Exhibit No. 48 for identification.

(The object previously referred to was marked Commonwealth's Exhibit No. 48 for identification.)

Now, will you please open this envelope and look at its contents and tell me whether or not you could locate the mark that you say you placed on them?

A. On this empty casing, right here at the bottom of it, is my initials, CLB (indicating).

Q. This, you took out of this particular tagged item called No. 3?

A. Yes, sir.

Q. Would you put that back in there, please,
page 1548 } I'd like to have this marked for identification
as 48A.

(The object previously referred to was marked Commonwealth's Exhibit No. 48A for identification.)

That has an initial B on the base which you put on it, is that correct?

The Court: He testified CLB.

The Witness: On the casing.

By Mr. Hassan:

Q. On the casing, you put what, sir?

A. On the casing, I put CLB.

Q. CLB?

A. Yes, and on the slug, on the tip end, just a B, because it's such a small area, I couldn't get the CL on there.

C. L. Bradley

Q. That is the item which is tag No. 4B?

A. Yes, sir.

Q. I'd like to have this marked for identification, 48B.

(The object previously referred to was marked Commonwealth's Exhibit No. 48B for identification.)

A. This also has the "B" on it, this is the one page 1549 } that is split.

Q. That is in the vial tagged 4A, I would like to have that marked 48C for identification.

(The object previously referred to was marked Commonwealth's Exhibit No. 48C for identification.)

A. This also has a "B" on the nose.

Q. That is in the vial tagged item No. 4D, I would like to have that marked 48D.

(The object previously referred to was marked Commonwealth's Exhibit No. 48D for identification.)

Are you ready in the next one.

A. Yes, this was an empty cartridge case and it also has the initials CLB down at the end.

Q. That is tagged item No. 1, I would like to have that marked for identification, 48E.

(The object previously referred to was marked Commonwealth's Exhibit No. 48E for identification.)

Do you have the next one?

A. Yes, sir, this is a cartridge case, an empty cartridge case with the initials CLB at the same location page 1550 } down at the end.

Q. That is item tagged No. 2, may we have that marked Commonwealth's Exhibit 48F for identification?

(The object previously referred to was marked Commonwealth's Exhibit No. 48F for identification.)

Do you have another one there, sir?

A. Yes, sir, this is the last one, this is a slug with "B" on the nose.

C. L. Bradley

Q. That is in the vial tagged 4C?

A. Yes.

Q. I ask that that be marked 48G for identification.

(The object previously referred to was marked Commonwealth's Exhibit No. 48G for identification.)

The Court: What was the number on that?

Mr. Hassan: Vial tagged No. 4C.

By Mr. Hassan:

Q. I show you this picture, sir, and ask you if you can tell me, were you present when that picture was taken?

A. Yes, sir.

Q. Where was it taken?

A. It was taken on Mr. Ervin's farm.

Q. What date was it taken?

A. On September the 16th.

Q. Who took it?

page 1551 } A. Trooper Kelly.

Q. Who is in that picture?

A. Detective Crickenberger is at the tree and Detective Eagle is over to the right of the tree.

Q. I'd like to have that marked for Commonwealth's Exhibit No. 49A, being the picture designated 3577-L-7.

(The photograph previously referred to was marked Commonwealth's Exhibit No. 49A for identification.)

I show you this picture, sir, and ask you whether or not you recognize that picture?

A. Yes, sir.

Q. Who took that picture?

A. Trooper Kelly.

Q. When did he take it?

A. September the 16th, 1967.

Q. Where did he take it?

A. On the same farm in Highland County.

Q. Who is in that picture?

A. Detective Crickenberger.

Q. Were you present when it was taken?

A. Yes, sir.

page 1552 } Q. What was he doing?

A. He's chopping into this tree.

C. L. Bradley

Q. I'd like to have that marked Commonwealth's Exhibit 49B, being photograph 3577-H-6.

(The photograph previously referred to was marked Commonwealth's Exhibit No. 49B for identification.)

I show you this picture, sir, and ask you, were you present when that was taken?

A. Yes, sir.

Q. Who took that picture?

A. Trooper Kelly.

Q. Was that taken at the same time as the other pictures?

A. Yes, sir.

Q. What is that a picture of?

A. A picture of a white oak tree.

Q. Is there anything occurring to that tree while you were present?

A. We were chopping into it.

Q. I'd like to have this marked as Commonwealth's Exhibit 49C, being photograph 3577-H-3.

page 1553 } (The photograph previously referred to was
marked as Commonwealth's Exhibit No. 49C for
identification.)

Q. I show you this photograph, sir, and ask you what that is?

A. That is a picture of the same white oak tree.

Q. Was that taken on the same date by the same photographer?

A. Yes.

Q. Were you present?

A. Yes.

Q. I'd like to offer that as Commonwealth's 49D, being photograph 3577-H-4.

(The photograph previously referred to was marked as Commonwealth's Exhibit No. 49D, for identification.)

I show you this photograph, sir, and ask you what that is?

A. It is a picture of the Ervin home and the pasture fields behind the home.

page 1554 } Q. Were you present when that was taken?

A. Yes, sir.

Q. Who took that picture?

C. L. Bradley

A. Trooper Kelly.

Q. Was that taken on the 16th day of September, 1967?

A. Yes, sir.

Q. I'd like to have this marked Commonwealth's Exhibit 49E for identification, being photograph Number 3577-H-5.

(The photograph previously referred to was marked as Commonwealth's Exhibit No. 49E for identification.)

I'd like to show you this photograph, sir, and ask you if you recognize that?

A. Yes, sir.

Q. Was that taken by Trooper Kelly on the 16th day of September, 1967, when you were present?

A. Yes, sir.

Q. I'd like to offer that for Commonwealth's Exhibit 49F, being photograph 3577-H-12.

(The photograph previously referred to was marked as Commonwealth's Exhibit No. 49F for identification.)

page 1555 } I'd like to show you this photograph, sir, and ask you was that taken at the same place at the same date by the same photographer?

A. Yes, sir.

Q. Were you present?

A. Yes, sir.

Q. What does that show?

A. It shows the pasture field back of the Ervin home.

Q. Who was standing in the field if anyone?

A. Detective Crickenberger and myself.

Q. I'd like to offer that as Commonwealth's 49G, being photograph 3577-H-11.

(The photograph previously referred to was marked as Commonwealth's Exhibit No. 49G for identification.)

I show you this photograph, sir, and ask you what that is?

A. That is a picture of the pasture field, showing the woods and it also shows the trees where we found four slugs.

Q. Were you present when that was taken?

A. Yes, sir.

page 1556 } Q. On the 16th day of September, 1967?

A. Yes, sir.

C. L. Bradley

Q. I'd like to offer this as Commonwealth's 49H, being photograph 3577-H-10.

(The photograph previously referred to was marked as Commonwealth's Exhibit No. 49H for identification.)

I show you that photograph, sir, and ask you whether or not you were present when that was taken?

A. I was.

Q. Was it taken by Trooper Kelly?

A. Yes, sir.

Q. On the 16th of September, 1967?

A. Yes, sir.

Q. What is it a picture of?

A. It is a picture of the white oak tree where the bullets were removed.

Q. I offer this as Commonwealth's Exhibit 49I, being photograph 3577-H-8.

(The photograph previously referred to was marked as Commonwealth's Exhibit No. 49I for identification.)

page 1557 } I show you this picture, sir, and ask you whether or not you were present when that was taken?

A. Yes, sir, I was.

Q. Was that taken on the 16th of September, 1967, by Trooper Kelly?

A. Yes, sir.

Q. What is it a picture of?

A. The same white oak tree that the bullets were in.

Q. I'd like to offer this as Commonwealth's Exhibit 49J, being photograph 3577-H-9.

(The photograph previously referred to was marked as Commonwealth's Exhibit No. 49J for identification.)

I'd like to show you this photograph and ask you whether or not you were present when that picture was taken?

A. Yes, sir.

Q. Did Trooper Kelly take that on the 16th day of September, 1967?

A. Yes, sir.

C. L. Bradley

Q. What is it a picture of?

A. It is a picture of the tree, and you can also see the bullet back in the tree where we have chopped it
page 1558 } out to get back to it.

Q. I would like to have that marked as Commonwealth's Exhibit 49K, being photograph 3577-H-4.

(The photograph previously referred to was marked as Commonwealth's Exhibit No. 49K for identification.)

I have no further questions of this witness, Your Honor.

The Court: Inspector Bradley, were the shell casings and slugs which you produced here all marked with your initials as you originally marked them?

The Witness: Yes, sir.

The Court: Are those still visible, those markings?

The Witness: Yes, sir.

The Court: Did they appear to you when you took them out of the vial today to be in substantially the same condition that they were in when you marked them?

The Witness: Yes, sir.

The Court: Where and when did you mark them?

The Witness: I marked them when I got back to the car.

The Court: Down on the Ervin farm?

page 1559 } The Witness: Yes, sir.

The Court: When you got them back to the car?

The Witness: Yes, sir, when I got them, we got them all back, I took possession of them all.

The Court: I believe you testified that you took them from the possession of Detective Crickenberger?

The Witness: Yes, sir, and this is the first time I have seen them all.

The Court: Okay.

CROSS-EXAMINATION

By Mr. Harrigan:

Q. I noticed in your pictures, there are quite a few trees in that area, is that right?

A. Yes.

Q. Did you look at any other trees?

Roscoe Eagle

A. Yes.

Q. Did you see any other trees with any holes in them?

A. Yes, I did.

Q. How far around the pasture did you look at trees, did you go pretty near all the way around looking at them?

A. I looked in the general area that Mr. Miller—

Q. I didn't ask you what you did.

Mr. Hassan: If Your Honor please, I am
page 1560 } going to insist that the witness be allowed to
answer questions that he's asked, even if counsel
makes a mistake.

Mr. Harrigan: Counsel isn't making any mistake.

Mr. Hassan: Then let him answer.

Mr. Harrigan: The question is a very simple question,
whether he looked at all the trees in the area.

Mr. Hassan: And his answer was a very appropriate answer to the question.

Mr. Harrigan: I am sure it was.

The Court: I think he answered it, he said he did.

By Mr. Harrigan:

Q. All right, who were the other fellows down there with you?

A. Trooper Kelly, Detective Crickenberger, and Detective Eagle.

Q. That is all.

The Court: Any further questions?

Mr. Hassan: No, Your Honor.

The Court: May he be excused?

Mr. Hassan: He may be.

The Court: All right, sir, you are excused, thank you.

(Witness excused.)

page 1561 } Mr. Hassan: Detective Eagle.

Whereupon, ROSCOE EAGLE, was called as
a witness on behalf of the Commonwealth, and having been
previously duly sworn, was examined and testified as follows:

Roscoe Eagle

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir, and your occupation.

A. Detective Roscoe Eagle, Arlington County Police.

Q. Directing your attention to the 16th day of September, 1967, did there come a time when you had occasion to be in Highland County, Virginia?

A. There did.

Q. Whereabouts were you?

A. Approximately seven miles below McDowell, Virginia.

Q. Who was with you?

A. Detective Crickenberger from the Arlington Police Department, Investigator Bradley, and Trooper D. D. Kelly.

Q. Did there come a time while you were there when anything was done on any particular piece of this property?

A. There did.

Q. Whose property was that?

page 1562 } A. Sam Ervin's.

Q. What was done?

A. We searched the property and picked up some cartridge cases and some bullets out of a tree.

Q. Who picked them up?

A. Detective Crickenberger and Investigator Bradley.

Q. Did there come a time when you had any contact with these bits of evidence?

A. I did not touch the pieces of evidence, no.

Q. I would like to show you, sir, a series of photographs and ask you whether or not you recognize these photographs, and whether you were present when they were taken, just look at them all, please.

A. Yes, sir, I was present when these photographs were taken.

Q. Who took them?

A. Trooper Kelly took them.

Q. Do they accurately portray what you saw that day?

A. They do.

Q. I have no further questions of this witness, Your Honor.

The Court: Any questions, Mr. Harrigan?

Mr. Harrigan: No questions.

page 1563 } The Court: You may be excused.

D. D. Kelly

(Witness excused.)

Whereupon, D. D. KELLY, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir, and *you* occupation.

A. D. D. Kelly, Trooper, Virginia State Police.

Q. Directing your attention to on or about the 16th day of September, 1967, did there come a time when you had occasion to perform some duty in McDowell, Virginia, or vicinity?

A. Yes, sir.

Q. On what property did you perform this duty?

A. Mr. Sam Ervin's property, south of McDowell.

Q. How far south of McDowell is that property located?

A. Eight or nine miles.

Q. What route?

A. 678.

Q. Who was with you when you went there
page 1564 } that day?

A. State Police Investigator Bradley and Detectives Crickenberger and Eagle, Arlington County Police.

Q. What did you do there that day?

A. We searched and found some cartridges and slugs.

Q. Did there come a time when some of those were found?

A. Yes, sir.

Q. Where were they found?

A. In a meadow back of Mr. Ervin's house there.

Q. Did there come a time when these items were gathered, these slugs and casings?

A. Yes, sir.

Q. Do you have anything to do with the gathering of them?

A. I don't recall exactly touching any of the slugs or casings, I was with the other police who did.

Q. Did there come a time when you took some pictures?

A. Yes, sir.

Q. I'd like to show you Commonwealth's Exhibits 49A through 49K, and ask you, sir, whether or not these are pictures which you took in Highland County, Virginia, at the Ervin farm, on the 16th day of September, 1967?

A. Yes, sir, they are photographs that I took on that date.

Stuart Crickenberger

Q. What are they, generally, photos of?
page 1565 } A. Of the area off of Mr. Ervin's house and
the meadow in back of his house.

Q. Does it show the area in which you and the men you
were with performed the duties you performed that day?

A. Yes, sir.

Q. I'd like to offer these into evidence, Your Honor, at this
time.

The Court: Is there an objection?

Mr. Harrigan: Same objection.

The Court: The objection is overruled, they will be received
in evidence and marked 49A through 49K.

(The photographs previously identified as Commonwealth's
Exhibits No. 49A, No. 49B, No. 49C, No. 49D, No. 49E, No.
49F, No. 49G, No. 49H, No. 49I, No. 49J, and No. 49K, were
received in evidence.)

Mr. Harrigan: Exception, I'd like the record to show I
have a continuing objection to this whole line of testimony.

Mr. Hassan: I have no further questions of Trooper Kelly.

The Court: Any cross-examination?

page 1566 } Mr. Harrigan: No questions of Trooper
Kelly.

The Court: May he be excused?

Mr. Hassan: He may be excused.

The Court: All right, you're excused, Trooper Kelly.

(Witness excused.)

The Court: Let the jury retire for a recess, Court will re-
cess for fifteen minutes.

Mr. Hassan: Detective Crickenberger, have you been
sworn, Detective Crickenberger.

The Witness: Yes, sir.

Whereupon, STUART CRICKENBERGER, was called as
a witness on behalf of the Commonwealth, and having been
previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Stuart Crickenberger

Q. What is your occupation?

A. Detective, Arlington County Police Department.

Q. Directing your attention to on or about the 25th day of August, 1967, did there come a time when you had occasion to respond to the six thousand block of Wilson page 1567 } Boulevard?

A. I heard the radio disptach, I was responding to the six thousand block, I never did get there, I entered a park, Bonair Park, and got out on foot and searched the park.

Q. What time was that?

A. I arrived in the park approximately 12:15.

Q. What did you do in the park?

A. I searched the park, the bushy areas of the park.

Q. What were you looking for, sir?

A. A suspect, we had a shooting in the six thousand block of Wilson Boulevard, I was looking for a suspect.

Q. Did you have a description?

A. Yes, sir.

Q. What was the description for the subject you were looking for?

A. He had on dark clothing, white male, I believe dark hair, Spanish descent.

Q. Any other description?

A. I remember dark clothing and yellow socks, but that is about it.

Q. Now, sir, how long did you search in that area?

A. It was around 12:38 that I was advised that I was wanted at the scene, I was taken to my car, which was parked on Arlington Mill Drive and went to the scene page 1568 } of the shooting, and this was approximately 12:42.

Q. Then what did you do, if anything.

A. I was instructed to interview witnesses.

Q. Who gave you these instructions?

A. Both Sergeant Kadel and Captain Weakley.

Q. Who did you interview?

A. I first interviewed a barber from the barber shop there, by the name of Thomas Blakeney, while I was talking to him, I was introduced to another witness who lived at 6026 North 9th Street.

Q. Do you remember that witness' name?

A. Thelma Burgess, I went to her home, she was there at

Stuart Crickenberger

the barber shop, after I interviewed the barber, I went to her home, I interviewed her.

I left there and I interviewed 6, 7, 8 people on Liberty Street, I interviewed Rebecca Middleton, Mary Rotchford, Jean Glakus, I talked to Mrs. Glenn Hall, I later talked to her husband, that was on the 26th I talked to her husband.

I made an attempt to locate a subject by the name of Warren Goodlett, who lived on Liberty Street, I could not locate him, I spoke briefly to Mr. Stuart who lives at Wilson Boulevard.

page 1569 } To the best of my knowledge, that is approximately the people I talked to that day.

Q. Did there come a time on the 25th when you did anything else in connection with this case?

A. Yes, sir, I was at 1033 North Larrimore Street when a Mrs. Freeman gave us a black coat and a gray cap that she found. I was at that location when the men from Fort Belvoir, soldiers from Fort Belvoir, brought their mine detecting apparatus and made a search along the fence between 1029 Larrimore and 1033 Larrimore.

Q. What time did you stop your operations on this day?

A. It was a little after, oh around 11:15 that night.

Q. What did you do from the time that the soldiers were at Larrimore Street?

A. We—Sergeant Kadel and myself, searched part of the route on Liberty Street, the escape route.

Mr. Harrigan: I object to his conclusion.

The Witness: We searched Liberty Street—

The Court: You're objecting as to his characterization of the route?

Mr. Harrigan: That's right, Your Honor.

The Court: The objection is sustained.

page 1570 } Mr. Hassan: I would like to have an exception to that, Your Honor, I would appreciate it if the Court would suggest what name we may use for it, if we can't use that name, because I certainly, in any argument I have, am going to use that term.

Mr. Harrigan: That's argument, Your Honor.

The Court: That would be all right, but I think that would be a mere conclusion on the part of the witness, you are entitled to draw conclusions when you argue the case.

Mr. Hassan: He knew what he was doing, Your Honor.

Stuart Crickenberger

Mr. Harrigan: Your Honor, I object, the objection has been made, I move to strike Mr. Hassan's remark.

The Court: Go ahead.

The Witness: We searched the area of Liberty Street from 9th Street down to Larrimore.

By Mr. Hassan:

Q. When you say searched, what did you do?

A. We lifted the cap off the manhole covers and we looked in the manhole covers, a couple of them we went down into, we were looking for a weapon.

Q. When you got through with that search, what did you do?

A. We went to the shopping center in the six thousand block of Wilson Boulevard and we went on the page 1571 } roof of that shopping center.

Q. When you got through with that, what did you do?

A. We stopped at a business place on Wilson and Edison and got a sandwich and ate that, and then we came to the station, we had a meeting, an investigative meeting.

Q. Did that last until about 11:00 o'clock?

A. Yes, sir, shortly after 11:00.

Q. Now, directing your attention to the 26th day of August, did there come a time when you worked on this case again on that day?

A. Yes, sir, I did.

Q. What time did you start working on that case on that day?

A. We started at 9:00 a. m. at the station, we were divided up into teams.

Q. What team were you with?

A. I was with the team that was to search around the rear of the shopping center, 9th Street, Liberty Street, Larrimore, down to the park.

Q. What were you searching for?

A. A weapon.

Q. What time did you start that search?

A. We arrived in the area of the shopping page 1572 } center just shortly after 10:00 o'clock.

Q. Who are the "we" that arrived at that time?

A. In the party that I was in, the supervisor was Ser-

Stuart Crickenberger

geant Pever, Sergeant Shoup took pictures, there was Detective John Wise, Detective Mitchell, and Officer T. D. Turner, P. J. Lewis, and myself.

Q. Did there come a time when this search that you conducted, produced any results?

A. Yes, sir, they did.

Q. What results?

A. At 2:22 p. m., it was announced that a weapon had been found in the park underneath a bridge, a footbridge.

Q. Were you there at the time?

A. I was in the park, but I was not in the area of the footbridge at the time it was found.

Q. Now, did there come a time when you interviewed anyone on the 26th?

A. I interviewed a lot of people that were home that day that weren't home on the 25th, we ascertained who was home, we tried to ascertain if we had missed any witnesses on the 25th.

Mr. Harrigan: Your Honor, excuse me, the answer is not responsive to the question. The question was
page 1573 } did there come a time when you interviewed somebody.

The Court: Well, perhaps it goes a little bit beyond it, but I think it is harmless, he is just leading into another subject.

By Mr. Hassan:

Q. Where was this series of interviews you are now talking about conducted?

A. The houses along the six thousand block of 9th Street, the nine and ten hundred block of Liberty Street, and the ten hundred block of Larrimore Street.

Q. Did there come a time when you conducted any interviews anywhere else?

A. I talked to Glenn Hall at his house on Liberty Street at that time, no, after the weapon was found, I remained at the footbridge, I didn't interview anyone there.

Q. Did you do any other work on this case on that day?

A. Yes, sir, I did, after we left the scene, Sergeant Shoup and myself, and P. G. Lewis, went to the property shop in the property yard and searched a '58 Chevrolet.

Q. What did you find there, if anything?

A. We found lead fragments in the car.

Stuart Crickenberger

Q. May I have property Number 23884?

I will ask you to examine that, sir, and tell
page 1574 } me what it is, if you know.

A. These are pill boxes, a bag that contains
pill boxes of the lead fragments that we removed from the
'58 Chevrolet.

Q. Did you take custody of those?

A. I did.

Q. Did you mark them in any way?

A. They were all so small, there were only three pieces
that were large enough to mark and if I marked them, I might
have ruined the bullet markings on them.

Q. What did you do with them?

A. I kept them in my custody and put them in the pill boxes
and turned them into the desk, the police desk, the property
room was closed, I turned them into Sergeant Ralph Keys.

Q. Did you initial the pill boxes?

A. I believe each one of them has a tag on them.

Q. When you turned them in at the desk, what did you do,
if anything?

A. I made out the property sheet on them.

Q. Did you sign the property sheet?

A. Yes, sir.

Q. I'd like to have this marked Commonwealth's Exhibit
for identification No. 50, that would be 50A and
page 1575 } 50B and so forth.

The Court: Excuse me, what was the name of the Sergeant
to whom you turned these items over?

The Witness: Ralph Keys.

By Mr. Hassan:

Q. Now, sir, I would like to have you open this envelope,
would you take the contents out, sir.

I'd like to ask you, sir, to look at that one and tell me if
you have any marks on that box.

A. Yes, sir, I marked item No. 1, the date, and my initials.

Q. Did you seal that box?

A. Yes, sir, I did.

Q. Did you hand that box to the Sergeant or did you hand
all the boxes to him at once?

A. The Sergeant watched me seal them, he watched me put
them in this.

Stuart Crickenberger

Mr. Harrigan: Whether the Sergeant watched him seal it or not, I think is up to the Sergeant, that was his impression that he was watching, perhaps, but I don't think he talked to the Sergeant, the answer wasn't responsive.

The Court: The objection is overruled.

Mr. Hassan: Go right ahead, Detective Crickenberger.

Mr. Harrigan: Exception.

page 1576 { The Witness: He watched me put the boxes into the bag, I sealed the bag, put my name on it and put scotch tape over the top of it.

By Mr. Hassan:

Q. Would you mark item No. 1 as Commonwealth's 50A, property 238884, and is that true of Nos. 2, 3, 4, 5, 6, and 7?

A. Yes, sir.

Q. Would you look at each one of those, please, keep them in the same order so we have 1, 2, 3, 4, 5, 6, and 7, running along with the As and Bs?

A. Yes, sir, that's true.

Q. I'd like to offer these for identification as 50B, C, D, E, etc.

Mr. Harrigan: How many have you got there?

Mr. Hassan: Seven, A, B, C, D, E, F, and G.

(The fragments previously referred to were marked as Commonwealth's Exhibits No. 50A, No. 50B, No. 50C, No. 50D, No. 50E, No. 50F, and No. 50G for identification.)

Now, sir, will you open No. 1, that is Commonwealth's 50A, do you recognize that as the contents of what you put in it?

A. It looks the same, yes, sir.

Q. Will you open Commonwealth's 50B, item No. 2, do you recognize that as what you put in that box, sir?

A. Yes, sir.

Q. Will you open the next one, please, which is 50C, will you open that item No. 3?

A. Yes, sir.

Q. Is that the same as when you put it in there?

A. Yes, sir.

Q. I show you Commonwealth's 50D, will you open that one, sir, do you find No. 4 to be the same as when you put it in there?

Stuart Crickenberger

A. Yes, sir.

Q. Now, I show you Commonwealth's 50E, which is item No. 7, and ask you to open that one, sir, do you find that one to be the same as when you put it in there?

A. Yes, sir.

Q. I show you Commonwealth's No. 50F for identification which is item No. 5 and ask you to open that one, sir, do you find that to be the same as when you put it in page 1578 } there?

A. Yes.

Q. I show you Commonwealth's 50G, which is item No. 6, will you examine that, do you find that to be the same as when you put it in there?

A. Yes, sir.

Q. Now, where did you get these fragments from?

A. The '58 Chevrolet, it was in the paint shop at the Arlington County Property Yard.

Q. Did there come a time when there were pictures taken of this car while you were getting these fragments?

A. Yes, sir.

Q. Who took those pictures?

A. Sergeant Shoup.

Q. If Your Honor please, I would like Commonwealth's 50A through G in evidence.

The Court: He has not yet said what they are.

Mr. Hassan: I thought he had. What are these items?

The Witness: They are bullet fragments.

Mr. Harrigan: I object to that.

The Court: The objection is overruled, you may test his knowledge on cross-examination.

Mr. Hassan: I offer these, sir, in evidence, Your Honor.

The Court: Now, Detective Crickenberger, page 1579 } are these the bullet fragments that you dug out of the car at that time as you have testified?

The Witness: Yes, sir.

The Court: Are they of such a form that you can say yourself, beyond any doubt, from looking at them, that they are the same pieces that you then saw.

The Witness: I am satisfied, some of the pieces, as you can see, have some of the felt from the inside of the seat on them, the material from the seat on them.

The Court: Do they all look substantially as they looked

Stuart Crickenberger

at the time that you put them in the boxes and turned them over to Sergeant Keys?

The Witness: Yes, sir, they do.

The Court: Is there an objection?

Mr. Harrigan: Yes, Your Honor, I want to ask him a couple of questions.

The Court: Go ahead.

Mr. Hassan: I am not through with my direct examination.

The Court: I understand, but just on the point of admissibility.

VOIR DIRE EXAMINATION

page 1580 } By Mr. Harrigan:

Q. You say you can identify these little pieces of metal?

Mr. Hassan: If Your Honor please, he didn't say any such thing.

Mr. Harrigan: That is what he just said, yes, sir.

Mr. Hassan: He said they looked substantially the same.

The Court: Before that I asked him—

Mr. Hassan: He already said he didn't mark them for identification, except in the boxes.

Mr. Harrigan: I think the witness can handle himself, I heard what he said, he said yes.

Mr. Hassan: I think the witness can handle himself, too, but I think Mr. Harrigan can handle himself within the framework of direct examination.

The Court: I asked him if he could identify these as the same ones he put in the boxes and he said yes, so you are overruled and Mr. Harrigan appears to be testing that.

Mr. Harrigan: Was that what you said, that you can identify them as being the pieces that you put in each box?

The Witness: I can identify those as the ones being similar to what I put in each box.

Mr. Harrigan: Let me ask you something,
page 1581 } can you tell which ones you put in each box?

The Witness: No, sir.

Mr. Harrigan: Then I wouldn't have to do any test then, would I?

Mr. Hassan: I am going to object to even referring to, let alone trying to, if he fiddles with this evidence, Your Honor, I think he is responsible to this Court.

Stuart Crickenberger

Mr. Harrigan: I will be responsible to this Court.

Mr. Hassan: If Your Honor please, if he is thinking of doing any tricks, I would like the Court to admonish him that he cannot, I am going to watch him close.

Mr. Harrigan: If I took one of the pieces out of these boxes and closed the lid and showed it to you, could you tell me which box I took it out of?

The Witness: I can't identify them out of the boxes or the item number, all I can say is the pieces in the boxes looked like the pieces I took from the automobile.

Mr. Harrigan: So you admit that, let me ask you this, then, most of these pieces in here are very tiny little pieces of metal, aren't they?

The Witness: Yes, sir, that is the reason I couldn't mark them.

The Court: Mr. Harrigan, do you have one page 1582 } I can look at?

Mr. Harrigan: Here's one (indicating).

The Court: I won't put you through any further necessity of cross-examination, I will sustain the objection at this point and allow the Commonwealth to go through a chain of custody proof on this. I don't think there is acceptable, sufficient identification by markings, they appear to be small fragments of metal and impossible to identify, so I will sustain the objection at this point.

Go ahead, Mr. Hassan, if you have further direct examination.

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Now, when did you make the examination for those fragments?

A. It was—we started around 4:20 p. m. on the 26th of August and we searched, we left the property yard at 6:00 p. m.

Q. Did you do any further work on this case that day?

A. I turned that in at the counter when I got back at the station and the only thing I can recollect right now is, I hate to be wrong about this, I know Sergeant Ralph Keys received some evidence, but I stated before it was many and he did receive some fragment elements from me before, but it wasn't—I don't believe it was that day he received this evidence and I can't recall right now who it was at the counter that received this par-

Stuart Crickenberger

ticular evidence, if I had my property sheet, probably I could, but right now I can't, to the best of my recollection, I gave that stuff to Ralph Keys. Now, I am not sure about that.

Q. Did you give something to Ralph Keys sometime?

A. Yes, I did.

Q. In connection to this case?

A. I did, I believe it was some evidence from Highland County, and I think I have got it mixed up with this particular evidence, to the best of my recollection.

Q. Did there come a time when you did go to Highland County?

A. Yes, sir, there did.

Q. What day was that?

A. September the 16th.

Q. Who was with you?

A. Roscoe Eagle.

Q. Did there come a time when you met up with some local policemen in that area?

A. Bradley from Salem, Virginia, and D. D. Kelly, the local policeman, yes, sir.

page 1584 } Q. Did there come a time when you had occasion to go somewhere in the vicinity of McDowell?

A. Yes, sir.

Q. What was the name of this place and where is it located?

A. McDowell is southwest of Stanton, it is in Highland County, I'd say it was thirty some miles from Stanton.

Q. What was the name of the place that you went to in the vicinity of McDowell?

A. A farm owned by Sam Ervin.

Q. Where's that located with reference to McDowell?

A. It is approximately four miles south of McDowell on a country road.

Q. When you went there, did you talk to anyone?

A. We talked to a lot of people, yes, sir.

Q. Did there come a time when you talked to anybody on the same Ervin farm?

Mr. Harrigan: I object, Your Honor, it calls for hearsay.

Mr. Hassan: It does not call for a conversation.

The Court: The objection is overruled.

The Witness: I talked to a Mr. Thomas Miller, yes, sir.

page 1585 } By Mr. Hassan:

Stuart Crickenberger

Q. Thomas Miller, now, as a result of your talk with him, did you do anything?

A. I did.

Q. What did you do?

A. I went to an oak tree, a white oak tree, located in a pasture at the rear of the house and we had a hatchet.

Q. What did you find in the oak tree?

A. There were holes in the oak tree.

Q. What did you do then?

A. When we first got there, we searched the field, the pasture in front of the oak tree and I found a bullet casing, a cartridge casing, Investigator Bradley found two, we went to the oak tree, there were holes in the oak tree, we started chopping the tree in the area of the holes and we chopped to the depth that we could remove these bullets that we found.

Q. How many did you remove?

A. Four bullets.

Q. Did there come a time when these bullets and these casings were marked by anyone?

A. There did.

Q. Who marked them?

A. Investigator Bradley was in charge, he
page 1586 { marked the bullets on the nose with a letter
"B," I marked them on the base a "SCC," and
the casings were both marked on the neck with our initials.

Q. Then, did you take charge of these slugs and casings?

A. I did.

Q. What did you do with them?

A. We came back to Arlington on the 17th of September, it was late in the evening and I turned them in, I put them in pill vials and turned them in at the police counter.

Q. Did you tag these vials.

A. I did.

Q. I'd like to show you Commonwealth Exhibit No. 49, No. 48, and 48A, B, C, D, E, F, and G, for identification and ask you to look at them and tell us whether or not you can identify these?

Would you examine that first, please (indicating), tell me whether you can identify that?

A. Yes, sir, that is an envelope in which I turned them in.

Q. How can you tell that is the envelope in which you turned them in?

A. It has my initials and my administrative number on it.

Q. Did you print that card?

Stuart Crickenberger

page 1587 } A. Yes, sir.

Q. Does it show who you gave them to?

A. No, sir, this bag doesn't show who I turned them in to, the property form would.

Q. Now I show you Commonwealth's Exhibit 48A and ask you, sir, whether you examined that, tell me whether or not that is it, what is that, sir?

A. It is a bullet casing.

Q. Do you find your initials marked on there?

A. Yes, they are.

Q. Do you find the initials of Inspector Bradley?

A. Yes, sir.

Q. I'd like you to examine Commonwealth's Exhibit 48B and tell me what that is, and whether you find your initials on that, sir?

A. Yes, sir.

Q. What is that, sir?

A. That is "SCC" on the base.

Q. Do you find Inspector Bradley's initials on that, sir?

A. Yes, sir.

Q. I ask you to examine 48C and tell us what page 1588 } that is, sir, and whether you find your initials on that one?

A. Yes, sir, it is a bullet that has my initials and the letter "B" on those.

Q. Will you examine 48D, sir, and tell us what it is and whether you find your initials on that?

A. It is a bullet and it has "SCC" and a "B" on those.

Q. Was that put on there by you, that "SCC"?

A. Yes, sir.

Q. Will you examine E and tell us what that is, sir, and whether you find the initials put on there by you and a mark put on there by Inspector Bradley?

A. Yes, sir, it is a bullet casing and it has my initials on it.

Q. Do you find the initials of Inspector Bradley?

A. Yes, sir.

Q. Would you put that back, please, and examine Commonwealth's Exhibit 48F, and tell us what that is, sir?

A. This is a bullet casing, it has my initials and it has a "X" behind my initials which indicates that this is the one that I found, Bradley found the others, it has Bradley's initials also on it.

Q. Now, I ask you to examine 48G and tell us what that is and whether you find your initials on that one?

Stuart Crickenberger

page 1589 } A. Yes, sir, it is a bullet and it has the initials
"SCC" on the base and it looks like a "B" on
there, but it is hard to see it, yes, sir.

Q. I'd like to offer these in evidence again, Your Honor.

The Court: Detective Crickenberger, do those slugs and casing appear now to be in substantially the same condition they were in when you marked them?

The Witness: Yes, sir, they do.

The Court: Is there an objection?

Mr. Harrigan: I have the same objection as I had before, Your Honor.

The Court: The objection is overruled, they will be received in evidence as 48A through G.

(The objects previously identified as Commonwealth's Exhibits No. 48A, No. 48B, No. 48C, No. 48D, No. 48E, No. 48F, and No. 48G were received in evidence.)

Mr. Harrigan: As I understand it, they are conditionally received in evidence?

The Court: Yes, sir.

Mr. Harrigan: Exception on the grounds pre-
page 1590 } viously stated.

By Mr. Hassan:

Q. Detective Crickenberger, directing your attention to the 25th day of August, 1967, when you returned to police headquarters, did there come a time when you had occasion to see the clothing that was worn by the defendant?

A. On the 25th I saw the defendant, I was there when the warrant was read to him, yes, sir.

Q. Did there come a time when you had occasion to see Commonwealth's Exhibit for identification No. 8A, being this item (indicating)?

A. Yes, sir.

Q. Where was that when you first saw it?

A. It was in the back seat of cruiser 112.

Q. What did you do with that, if anything?

A. I removed it from the back seat of cruiser 112 and gave it to Detective Davis.

Q. Where was he?

A. He was on the third floor of the police department, the detective bureau.

Stuart Crickenberger

Q. What was he doing at that time?

A. He was impounding property.

Q. What kind of property?

page 1591 } A. Clothing.

Q. Do you know whose clothing it was?

A. Well, it looked like the clothing I had seen on the defendant, but I don't know whose clothing it was.

Q. You removed that from Davis' car and gave it to him in the detective bureau?

A. Yes, sir.

Q. I'd like to offer this again at this time, Your Honor, this is Commonwealth No. 8A for identification.

The Court: Davis has then testified that he marked that with that tag, has he not?

Mr. Hassan: I would have to check back on the records, I don't know whether he put that tag on it or not, Your Honor, it looks to me like that is Mr. Davis' tag, I can't remember what his testimony was, I have notes on it. The reason it was not admitted was that he said it came from the car and not from the jail.

Mr. Harrigan: He said he didn't know where it came from, when he came in, it was on the desk or on the floor and he didn't know who put it there.

Mr. Hassan: He said he didn't know who brought it up from the car.

My notes don't help me on that, Your Honor.

page 1592 } The Court: My notes say that he identified the towel and marked it, but he couldn't establish where it had come from, all the items of clothing were taken off the defendant by Deputy Wilkerson, delivered to the jail, and put in a shopping bag, which in turn, he turned over to Officer Skinner at the desk.

Detective Crickenberger, are you able to identify that towel as the one that you got from the seat of cruiser 112 and took up and gave to Detective Davis at the desk?

The Witness: The only thing I can say is he requested I remove a white towel from cruiser 112, I did and I gave it to him, he was there putting tags on them, now, I can't identify the towel, I did not mark it, I didn't even know what the connection was at the time, I was busy with other things.

The Court: Does the defendant object?

Mr. Harrigan: Yes, Your Honor.

The Court: Objection sustained.

Stuart Crickenberger

By Mr. Hassan:

Q. Now, Detective Crickenberger, directing your attention to Commonwealth Exhibit No. 42 and 43, I ask you, sir, whether you have seen these before?

A. Yes, sir, I have seen them.

Q. When did you first see them?

page 1593 } A. On the evening of the 25th of August.

Q. Where did you see them?

A. On the front yard of 1033 North Larrimore Street.

Q. I guess I only gave you part of it, I am sorry, 42 and 43, does that include that, sir?

A. Yes, sir.

Q. After that, did you have occasion to see that again?

A. Yes, sir.

Q. What was that occasion?

A. On the 9th of September, I withdrew these articles from the property room.

Q. Did you sign for them when you got them?

A. I did.

Q. What did you do with them?

A. I took—they were sealed, this I never broke the seal on, I broke the seal on the coat, they were shown to Matt Cole and Frank Draeger at the Nazi Headquarters, I believe Redfield was present, he's a member of that party, then we went—we, Detective Knight and myself, went to Spotsylvania, a printing plant in the area, of the printing plant, and we showed the coat and the cap to Annette Brooks, who lives there in Spotsylvania County, Virginia.

Q. Did you show that coat to anyone else?

page 1594 } A. No, sir, not that I recall.

Q. What did you do with it after you had taken the coat and shown it to these people?

A. I returned to the station and on my return the property room was closed, I turned it in to the police counter, and I am sure I turned it in to Officer Burchette.

Q. Did there come a time when you took it out again?

A. No, sir, not that I recall.

Q. That is the last time that you took it out?

A. Yes, sir, I went and looked at it, but I didn't take it out of the property room.

Q. You looked at it in the property room?

A. Yes, sir, it was sealed, the seal wasn't broken.

Q. Now, sir, directing your attention to Commonwealth's

Stuart Crickenberger

Exhibit No. 5G, I'd like to show you that, sir, and ask you whether or not you conducted any investigation to locate the original of that?

A. Sergeant Kadel and myself *whent* to 6150 Wilson Boulevard, at the Nazi Headquarters, we had a copy of this, I showed it to Major Koehl, Matt Koehl, and I requested that a search be made for the original. We have never received the original.

Q. Did there come a time when you received any papers?

A. We received papers from the Nazi Party.

page 1595 } Q. Have you gone through those, looking for the original of that letter?

A. Yes, sir, we have.

Q. Have you been able to find it?

A. No, sir, we have not.

Q. When did you make that search, when did you start looking for that original?

A. In the papers that we had.

Q. No, the date of time, when did you make this request?

A. This would be on Monday, the Monday after August 25th, the following Monday after the day of the shooting.

Q. Up to this time, you have not received them?

A. No, sir, we haven't.

Q. Have you made further inquiries?

A. As an investigative team, I know that further investigation was made.

Mr. Harrigan: Objection, Your Honor.

Mr. Hassan: Were you present?

The Witness: I was present.

The Court: The objection is overruled.

Mr. Hassan: When was the latest, if you recall?

page 1596 } The Witness: The day it snowed, last Thursday, there was a request made.

Mr. Hassan: What was the purpose of renewing the look for the original that day?

The Court: Now, obviously, the purpose was to find the original.

Mr. Hassan: It was for the purpose of the handwriting exemplary.

The Court: I think you better let that one pass and go on to another subject, having answered the question.

Stuart Crickenberger

By Mr. Hassan:

Q. Now, sir, on the seven fragments which you placed in the seven boxes, can you tell us where item one came from?

A. Not without my notes, no, sir.

Q. You have notes that would indicate where each one of those seven items came from?

A. I believe there are more than seven fragments, they were impounded as to the location where they were found, they were found in seven locations within the car.

Q. There's more than one in some boxes?

A. Yes, they are very small.

Q. Do you have notes which would indicate where each one of those items would come from?

A. Yes, sir.

page 1597 } Q. Where are those notes?

A. I have them in my pocket.

Q. Would you refresh your recollection and tell us where each one of those items came from, did you make these at the time of the search?

A. Yes, sir.

The Court: This would be relating to Commonwealth's Exhibit 50A through G for identification?

Mr. Hassan: Yes, Your Honor.

The Witness: Are these the fragments from the automobile?

Mr. Hassan: From the automobile.

Mr. Harrigan: If he hasn't identified item one, and it's not in evidence, how can he testify where it came from until they connect it up, I mean they're either in evidence where he can testify about them or they're not in evidence and I understood they're not in evidence at this point.

The Court: Mr. Harrigan, I sustained your objection because they could not positively be identified as the items which were taken from the car, those items which are here today, however, the Commonwealth will have an opportunity to go through a chain of identification and this would be one link in that chain, so I will let him testify, but it will not result in their admission without further connection.

Mr. Hassan: I want him to tell us where the items came from that he put in the boxes that he has numbered.

The Witness: Item No. 1 came from beside the left rear door post, 2, the right rear back rest of the rear seat, 3, the

Stuart Crickenberger

left side of the rear window deck, and No. 4 was on the right side of the dashboard, 5 was beneath the right side of the rear seat, as we removed the rear seat back cushion, this fell (indicating), you could hear it fall, and No. 6 was taken from the inside of the center top portion of the front seat back rest, and No. 7 was impregnated in the metal behind the right side of the rear seat back rest. It was in the metal of the right rear wheel well.

Mr. Hassan: I believe I have no further questions of this witness at this time, Your Honor.

The Court: Mr. Harrigan.

CROSS-EXAMINATION

By Mr. Harrigan:

Q. I show you Defendant B1 and B2, did you ever see those pictures before?

A. Yes, sir, I have.

Q. When was the first time you saw them?

page 1599 } A. They were in the Patler file that was sent down from the Nazi Headquarters.

Q. Now, did you see that file that was sent down?

A. Yes, sir, I did.

Q. Who sent it?

A. Matt Koehl.

Q. Now, you said that you took a coat and a hat to show to Frank Draeger and Matt Koehl and somebody else?

A. Yes, sir.

Q. Did you take the hat up, also?

A. The cap, yes, sir.

Q. Did they handle that coat?

A. No, sir.

Q. Was it in the bag?

A. No, sir, I took it out of the bag, but I had it in my possession.

Q. Did they look at it at all, turn it around, or get near it?

A. They didn't handle it, they looked at it.

Q. From how far away? Did they touch it at all?

A. Not that I recall, no one got—

Q. Do you recall if they did?

A. I am sure nobody touched it, they were
page 1600 } standing close to it.

Q. When did you take the coat down to Spot-sylvania?

Stuart Crickenberger

A. On September the 9th.

Q. Who went with you?

A. Detective Knight.

Q. You said that you brought the hat along, too?

A. Yes, sir, I did.

Q. You took it to somebody named Annette Brooks?

A. That's correct.

Q. Was it Ned or Annette?

A. Annette.

Q. That is a girl?

A. That is correct.

Q. Then you say you brought it back, did you talk to anybody else down there?

A. I talked to the Brooks woman. Not in relation to the coat, no sir, I talked to the Brooks woman that has that store there.

Q. Then you say you brought the coat back and what did you do with it when you brought it back?

A. We turned it back into the property room, I had to make out a new property sheet because the—

Q. What time did you get back?

page 1601 } A. It was almost 4:00 o'clock in the evening,
I would say ten of, something like that, quarter of.

Q. Maybe I misunderstood you, I thought you had said you turned it into the police counter.

A. I turned it into the police counter, the property room was closed.

Q. Who did you turn it over to over there?

A. Burchette, Officer Burchette.

Q. Now, on the 26th of August, you did one other thing, didn't you, you searched the defendant's home, didn't you?

A. Right, yes.

Mr. Hassan: If Your Honor please, I am going to object to that, that was all disposed of in a motion.

The Court: What is the relevancy?

Mr. Harrigan: I just want to show he didn't find anything, he was searching for guns and bullets.

Mr. Hassan: There were other searches, why didn't he ask questions of other witnesses with the matter disposed of by motions, too, Your Honor.

The Court: That objection is overruled, go ahead.

Stuart Crickenberger

By Mr. Harrigan:

Q. Now, you searched the defendant's house for bullets?

A. Yes, sir.

page 1602 } Q. And for guns?

A. A cap and ball pistol.

Q. Just what were you searching for a cap and ball pistol for?

A. It was stolen at the same time a Mauser 7.63 was stolen.

Q. Is that right?

A. Yes, sir.

Q. Who told you that?

A. We had a reliable informer.

Q. Just tell me who told you that.

Mr. Hassan: Objection, Your Honor, that discloses an informer.

Mr. Harrigan: I think he does—

The Court: You are willing to accept it as hearsay, now you are asking for the informer?

Mr. Harrigan: I just want to know who gave the information because I think whoever it is, is a liar.

The Court: Why could it not be, Mr. Hassan.

Mr. Hassan: Because this is now the question on the basis of a search warrant and the Supreme Court has held that the police may keep confidential an informer in connection with a search warrant.

page 1603 } Mr. Harrigan: It was Robert Lloyd, wasn't it?

Mr. Hassan: Objection, Your Honor.

The Court: The objection is overruled.

Mr. Hassan: I'd like to have an exception.

The Court: All right, sir.

By Mr. Harrigan:

Q. Who told you that?

A. Robert Lloyd.

Q. You said that that was your reliable source, is that right, Robert Lloyd?

A. He was reliable to me, I had no reason not to believe him.

Q. He owned the murder gun, didn't he?

A. He reported it was stolen.

Q. But he owned it, he was officially registered as owning that gun?

Jesse E. Wismer

A. As far as I know, he was.

Q. He was?

A. He was.

Q. He told you that that gun had been stolen?

A. He didn't tell me that it had been stolen at the time it was stolen.

Q. Now, you didn't find any bullets at 2522
page 1604 } Lee Highway?

A. No, sir, I did not.

Q. Now, you also looked up there for murder plans, isn't that right?

A. Yes, sir, murder plans and correspondence.

Q. Did you find any murder plans that you were looking for at the house?

A. No, sir.

Q. That's all.

The Court: Redirect examination, Mr. Hassan?

Mr. Hassan: No redirect, Your Honor.

The Court: May the witness be excused?

Mr. Hassan: This witness may be excused.

The Court: All right, sir, you are excused, thank you.

(Witness excused.)

Mr. Hassan: May we proceed?

The Court: Yes, sir, I'd like to keep going for a while, if you all wear out, let me know and we will recess.

Mr. Hassan: My next witness is a real tedious witness, a property clerk with all of the records, all of the signatures of everyone who handled all of this, worse than last night's session.

The Court: All right, call him in.

page 1605 } Mr. Hassan: Jesse Wismer.

Whereupon, JESSE E. WISMER, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

Jesse E. Wismer

A. Jesse E. Wismer, Property Clerk, Arlington County Police Department.

Q. How long have you been a property clerk?

A. Approximately four years.

Q. Now, Jesse, all during this trial, just like in the Adams Family, the "Thing" has been sticking a hand in that door, do you know who that was?

A. Yes, sir, it was me.

Q. It was you, now, have you brought with you the records of the property room?

A. Yes, sir.

Q. What do those records show?

A. It shows who turned the evidence in, who page 1606 } accepted it, and the property number which we assigned it, and the location where we stored it.

Q. What is the first property number that you have in connection with this case?

A. 23871.

Q. Do you have that original sheet with you?

A. Yes, sir.

Q. Is that the one that is always blotted?

A. Yes, sir, it has numbers blotted, yes, sir.

Q. Now, what is that property sheet for?

A. It is one shell casing.

Q. What does that record on that shell casing in your department indicate?

A. It indicates the date that we received it, the time it was picked up, the location it was picked up, the officer that picked it up, and the man that turned it in at the property room, and the man that accepted it at the property room.

Q. Is the name of the man who picked it up and turned it in written and signed by the man who did this?

A. Yes, sir.

Q. Is the signature of the person in the property room who received it, a signed signature personally by that man?

A. Yes, sir.

page 1607 } Q. Does that show a date and time?

A. Yes, sir, it shows a date and time.

Q. On the reverse side of that form, sir, I know there are many entries, and they're all signed Jesse Wismer, will you tell us what those are?

A. Yes, sir, that is each time the item was checked out of the property room, the date and the time it was checked out, by whom, and the date and the time it was returned to the

Jesse E. Wismer

property room, and it is signed by the officer that checked it out and the property clerk that received it back in.

Q. Below that, I know that there is an entry which says "Special Handling," what does that show?

A. That shows the date and the time that it was taken to the FBI, by what officer that took it to the FBI, and the Special Agent that received it at the FBI, the line below it is the date that it was received from the FBI, the officer that picked it up and the time that he returned it back to the property room.

Q. Are there any other entries on property No. 23871?

A. No, sir.

Q. Now, if Your Honor please, I'd like to offer the original for examination and have a photostatic copy marked for identification.

page 1608 } These are the original records of the police department, do you have a photostat of that item, sir? Don't try to steal mine, now.

A. I don't have any others.

Q. I thought you made two sets.

A. No, just one.

Q. Commonwealth's Exhibit No. 51A, being property No. 23871, Commonwealth's Exhibit No. 16.

(The document previously referred to was marked Commonwealth's Exhibit No. 51A for identification.)

The Court: This relates to your Exhibit 16?

Mr. Hassan: It does, Your Honor, which was admitted into evidence, according to my records.

By Mr. Hassan:

Q. Now, will you tell us what your record shows as to what time that item was found and by whom?

A. It was found 8/25/67 at 1:30 p. m. by Officer R. U. Roof.

Q. What time was it turned in?

A. It was turned in 8/25, 1967 at 3:00 p. m. by Officer Roof, to me.

Q. What time was it taken out by you for page 1609 } special handling?

A. It was taken to the FBI 8/25, 1967, at 5:30 p. m.

Q. Who received it there?

A. Special Agent W. G. Johnson.

Jesse E. Wismer

Q. Did there come a time when it was returned from the FBI?

A. Yes, sir, on August the 31st, 1967, I received it from Mr. Johnson at 3:00 p. m. and returned it to the property room.

Q. Has it been out of the custody of the property clerk at any time from 3:00 p. m. on August 25th, 1967, to the date, with the exception of the time it was at the FBI?

A. Up to date. On 9/28 we took it out for Court.

Q. But it was still in the custody of the property clerk.

A. It was in my custody, yes, sir.

Q. Do you show Court times on your records?

A. Yes, sir.

Q. Do you show the date that it was handed by "Thing" through that door over there, in this case?

A. Yes, sir, on December the 4th, 1967.

Q. What time?

A. At 5:25 p. m.

page 1610 } Q. I'd like to offer this in evidence, Your Honor, in offering this, I would like to state, this is typical of the records which I will produce concerning items turned directly into the property room, which were taken to the FBI.

Mr. Harrigan: I object to that, I think his testimony is sufficient and he has the other information on there which he has no knowledge of, which is a part of his record, which is pure and simple hearsay to him and to put the whole record in, I don't think is proper.

The Court: I am not certain as to the purpose for which this is offered, I realize this is typical and will help us with other items on which there's some question about a chain of custody or a chain of identification, but I don't propose to you, Mr. Hassan, to introduce one of these as to every item, which has already been admitted into evidence.

Mr. Hassan: I intend to tender one as to every item, I intend to prove one of every method of presenting it and I have available to call every individual who touched any piece of this to testify in this Court, if this Court is going to require that to admit my evidence.

The next grouping that we will go into is where, as you have had testimony, the item is turned into the property room.

page 1611 } The third grouping is where the item was taken directly to the FBI and there are two items in that group.

Jesse E. Wismer

Mr. Harrigan: Your Honor, I thought the argument here was whether that document, itself, was going into evidence. There isn't any argument about whether he can testify about it and where it went, or where it didn't go, but I take it, he is offering that piece of paper in evidence.

The Court: My question was prompted by the thought that it doesn't go to prove any fact in issue now. As to this item, it is already in evidence. You may certainly make your tender for the record in order to indicate that if the Court didn't have sufficient basis for admitting it, there are other ways of doing it, but for the purpose of getting these various items into evidence that are already in—

Mr. Hassan: But so much has been admitted conditionally. Your Honor, I don't dare to take any chances.

The Court: As to these items admitted conditionally, I don't think any of them were admitted conditionally upon your showing a chain.

Mr. Hassan: I understood you to tell me Friday afternoon that my nose was going to be held to the grindstone to prove the complete chain of custody in every item.

The Court: That is correct, but that is just to page 1612 } items not admitted, if the item is already in evidence—

Mr. Hassan: What about the conditionally admitted items, what do I have to do?

Mr. Harrigan: Your Honor, if we are going to argue this—

Mr. Hassan: We are going to argue this, so maybe the jury better be excused, this is a long tedious job and this is a long day.

Mr. Harrigan: I object to the speeches.

Mr. Hassan: He objects to my breathing, let's get that straight.

The Court: Gentlemen, don't indulge in any exchanges here, they aren't necessary.

I don't think it is necessary for you to produce proof of any chain of custody as to anything that has already been admitted into evidence. The record will reflect that you have the records available and have tested them, but I don't think it is necessary to go through them.

Now, as to items not yet admitted into evidence, I will be glad to receive those now, and I think this as good a time as any.

Mr. Hassan: We will accept, Your Honor, that it takes about three hours to separate these, it took me

Jesse E. Wismer

page 1613 } three hours to get them related and by property numbers to these exhibits, and I am prepared to do it on each one. I don't know which one was conditionally admitted and which one wasn't because I didn't prepare for that this morning on that particular basis. I understood we had to do it on every particular item, if you want to recess now, we will be ready in the morning.

The Court: I will let the jury go and I can go through these items with you in ten minutes that I have in my notes so that you will know in the morning where to proceed with them.

Ladies and gentlemen, we will take these up out of your hearing and resume in the morning, you are excused until 10:00 o'clock under the same instructions as heretofore. We will see you in the morning.

(Out of the presence of the jury.)

The Court: You gentlemen may have some other recollection, but as to items conditionally admitted, my recollection is that none of them were admitted conditionally upon a chain of identification being established. The only conditional admission has been conditional upon a showing of a connection with the defendant, examples of that would be the cap and the coat

and there have been a few others like that. Now, page 1614 } where a chain has been asked for, those items haven't been admitted at all, so this type of proof would be probative as to those and ought to be brought forth, but I don't think you have to worry about any conditional admissions. They weren't admitted conditionally upon any chain, where a chain was lacking—

Mr. Hassan: Can we go through the items which have been admitted, Your Honor.

The Court: Yes, sir, I would rather do that right now and see if our records agree.

Exhibit 1, medical examiner's report was admitted, 2A through W, slides, all of those were admitted, 3 were bullet fragments taken at the *autopsy*, A, B, and C, they were admitted.

Mr. Hassan: My records show that they were admitted conditionally on that score, I had them checked, I had to produce Officer Shoup, Officer Wismer, and the FBI in the chain of custody.

The Court: Do you have a note on that, Mr. Harrigan?

Jesse E. Wismer

Mr. Hassan: All I have is a check that this was a conditional one that Friday night, had to be proven.

Mr. Harrigan: The bullet fragments, I believe, were admitted conditionally because I understand that
page 1615 } all the boxes were open with the bullet fragments, if I'm not mistaken.

The Court: My notes don't furnish much help, so maybe you are right and maybe you better go through your chain of custody on them. I did not make the usual notations that I make.

Mr. Hassan: Jesse, will you make a note that is property 23874?

The Witness: I could enlighten you on that, I am pretty sure.

Mr. Hassan: This is what I'm going to have to prove, you will just have to testify on this tomorrow.

The Court: Just make notes for your own reference that you will be testifying on those things tomorrow.

The Witness: 23873 isn't the—

Mr. Hassan: No, 23874, fragments from wound one, wound four, and wound three on the autopsy.

The Court: The next item is 4A which is a map of Dominion Hills and environs, which was admitted.

Mr. Hassan: The next is 5G.

The Court: 5A, B, C, D, E, F, and G were admitted.

Mr. Hassan: 5A, B, C, D, E, and F were refused and G we had to have more proof on.

The Court: The trousers were admitted.
page 1616 } Mr. Hassan: I've got that confused, I understood that you denied all of Rockwell's clothing except 5G, and 5G you wanted more proof on.

The Court: You're right, you're right, I will have to straighten out my notations here, yes, they were for identification only, the wallet and the envelope containing money were returned. All were refused except 5G and that is still marked for identification and not admitted.

Six were pictures.

Mr. Hassan: Seven were pictures.

The Court: Those pictures were not admitted, they were for identification, they were pictures of the car taken in the paint shop.

Mr. Hassan: They were testified to, today, and I elected to put them in.

Jesse E. Wismer

Mr. Harrigan: The fragments, A, B, C, and D were shown to the jury and obviously they were admitted, 3A, B, and C.

Mr. Hassan: 3A, B, and C?

The Witness: Bullet fragments taken from the car were shown to the jury.

Mr. Hassan: So they were admitted.

The Court: That is what my notes show, page 1617 } yours show they were not, then, we don't have to have testimony on 3A, B, and C in the morning. Are you satisfied?

Mr. Harrigan: I think they were admitted as fragments which they took out of the body which would make it admissible, I think it probably comes down to this, if he has other evidence concerning tests on these fragments, I think the only thing they have to do then is show they were made on the same fragments they took out of the body. I think they were admitted as fragments taken out of the body.

Mr. Hassan: All right, we'd better prove that, I guess, 23874, the only way we can prove that is to prove chain, that is how we got it. Exactly what I understood was going to happen.

The Witness: I have got 23877 as—

Mr. Hassan: We'll come to those, 23877 were Rockwell's clothes, they were refused with the exception of the letter. We went back to 23874 so that went back in chain.

The next one we have got, Your Honor—

The Court: Mr. Hassan, on that, the clerk has got those things and I have initialed them so they are in evidence, but I gather you are interested in the case of further handling.

Mr. Hassan: He just said now I am going to page 1618 } have to prove how they got to the FBI.

The Court: Which is the police, which is something your former proof didn't show.

I think you're going to find that there was a conditional admission of 6A, 6B, and 6C.

My notes say they were in evidence, subject to later connection by testimony, that this was the car found at the scene and I have already ruled on that, with respect to other photographs, the license plate sufficiently identified it for me, and I will consider that condition has been fulfilled and they are in evidence.

Mr. Hassan: They are in evidence and they have not yet been shown to the jury.

Jesse E. Wismer

The Court: 7A, B, and C were photographs that were stipulated into evidence, 8 is the clothing of the defendant, A was not admitted, B, the shirt was.

Mr. Hassan: B, D, E, F, and G, the socks were not.

The Court: The socks were not, I have that marked as 8F-1, instead of 8G, if that is of any help.

Mr. Hassan: You have that marked what?

The Court: 8F-1.

Mr. Hassan: That was because they were in the same envelope, but then when you admitted the belt, I page 1619 } thought you changed it to G, you took the belt out of the envelope and admitted it and the socks were not admitted.

The Court: The socks were not admitted and that was one in which the ruling was that the chain of custody had to be established, so you will need testimony on that.

Mr. Hassan: That is 23869, Jesse.

Mr. Harrigan: The socks were never identified, the witness can't identify them to start with, they were never—

Mr. Hassan: I think the witness did, he put them in a bag, which he sealed and I think that is pretty good identification and I think we can show the chain of custody on that and the towel, too. I think putting them back in that shopping bag and sealing them is just as good as sticking a wire through them like Ben Taylor does.

The Court: Now, I think 9A and B are all photographs, 9A through 9H.

Mr. Hassan: My records show everything admitted now through 13A.

The Court: 10A to 10C were photographs of the hat and coat on the ground and they were admitted conditionally, subject to connection, but they don't involve a chain of custody, 11, 12, and 13A admitted, 13B was not admitted and a chain of custody would be necessary on that, page 1620 } Mr. Hassan, that was a part of the bullet found in the chest.

Mr. Hassan: 23873, Jesse.

The Court: 14A1 and 2 were admitted, 14B was the jail receipt which was refused, because of lack of identification of the signature of the defendant, 14C was admitted, handwriting exemplaries, 15A and B were admitted, photographs of exemplaries, 16 was admitted, that was a shell casing found on the roof. All the 17s were admitted without objection, that was A through K.

Jesse E. Wismer

Now, my notations on 18 are that they were just for identification, I don't know if that has been put in evidence or not.

Mr. Hassan: 18A, B, C, according to my records, were put in evidence.

The Court: Will you examine them Mr. Taylor?

The Clerk: I think 18A through J were in evidence.

The Court: I think they came in this morning, with some objection subsequently, didn't somebody refer back to them.

The Clerk: Yes, sir.

Mr. Hassan: They're all in evidence, that's 18A through J.

The Court: Nineteen, paint samples, my notes page 1621 } are that the chain of custody is required.

Mr. Hassan: That is 23886, Jesse.

The Court: Twenty, tar samples, same thing.

Mr. Hassan: 23885.

The Court: Twenty-one is in evidence, six foot print lift-ings.

Twenty-two, tar from roof, I guess that is another tar sample just for identification.

Mr. Hassan: There's two sets of tar samples, there was that taken on the 26th and that taken on the 25th, the 22 was that taken on the 25th.

The Court: All right, that would require a chain of custody.

Mr. Hassan: I think that is in property number 23880, part of which has been admitted.

The Witness: 880 is the foot prints, the one that you are referring to, the tar is 23883.

The Court: Now then, you have seventeen soil samples which are your exhibits 23 through 40, all of which require a chain of identification.

Mr. Hassan: That is 23910, Jesse.

The Court: Forty-one, also is marked only for identification, remains of a steel jacket projectile, removed from the head liner of the car in the paint shop, placed page 1622 } in the box, but not marked, turned over to Officer Skinner on the 25th, it is now marked, but it wasn't marked then, it is Exhibit 41, that would require some testimony.

Mr. Hassan: That is 23882, Jesse.

The Court: Then there are the cap and the coat, but they don't require a chain of identification, they require some connection.

Jesse E. Wismer

Mr. Hassan: Are they admitted, then, conditionally?

The Court: No, they are admitted.

Mr. Hassan: Then they do require a chain?

The Court: No, they require some testimony connecting them with the defendant.

Mr. Hassan: I understand, these were a special group, these were taken to the FBI.

The Court: I am talking about the hat and the coat, not the pictures of them.

Mr. Hassan: The hat and the coat and the gun went straight to the FBI, they didn't go through this property record section situation. Now, I want to know whether I am going to have to go through the chain or not, this is a special category.

The Court: I assume that Mr. Harrigan is going to object, unless you have the man from the FBI say I got page 1623 } it from the Arlington Police and I returned it to the Arlington Police and this is what happened to it, it seems that would cover it if you have witnesses from the FBI to testify.

Mr. Hassan: I intend to have the man who he received them from and who gave it back to them and what he did with them while he had it, but I want to know whether or not I have to show the carrying of it all.

The Court: I don't, if Mr. Harrigan would waive that.

Mr. Hassan: I doubt he would.

Mr. Harrigan: You know I wouldn't waive it.

The Court: In this case, I will need the evidence, but it is premature at this moment, but you haven't come to that point in your case, yet.

44A is a gun which is in evidence.

The Witness: 23876, that is the tan coat and the gray hat, do you want the number of the gun, Mr. Hassan?

Mr. Hassan: No, the gun is already in.

The Court: The gun is in evidence, the 44V for identification is an envelope with the gun. I guess that is an FBI marking.

Mr. Hassan: They unloaded the gun, they changed the condition of the gun after they received it and what page 1624 } they took out of it, they put in that, and that has just been marked for identification, it came back with the gun, but it went in one piece untouched.

The Court: All right, the next is a long series of photographs that came in this morning, 45A through GG, all of

Jesse E. Wismer

which were admitted, 46 is in evidence, that is an enlargement of the wrist watch picture, 47A through F were all admitted, 48A through G were admitted, 49A through K were admitted and 50A through G were bullet fragments which were merely marked for identification just a few minutes ago, and chain of custody would be required.

Mr. Hassan: A chain of custody on that, Your Honor?

The Court: Yes, sir, the bullet fragments that Crickenberger just produced.

Mr. Hassan: What is that number?

The Witness: 23884, that is the bullet fragments.

Mr. Hassan: Yes, sir.

The Court: Seven pill boxes, and I have one more marking, I don't know what it is, it is 51A, that is the last thing that was mentioned and it relates to Exhibit 16, that is this property record right here.

Mr. Morris: How many then do we have, Your Honor, of the chain of custody? How many property sheets, altogether?

The Court: I haven't been counting them, but page 1625 } he has got them.

The Witness: Ten.

Mr. Hassan: Ten.

The Court: All right, gentlemen, that shouldn't take so long to go through that testimony, now, and I will see you at 10:00 o'clock.

Now, gentlemen, did you wish to argue this point now and I will hear you on it if you do, that is whether or not the Commonwealth can satisfy its evidentiary requirement of a chain of identification by these records as official records, as exception to the hearsay rule, or must they bring individuals who have signed them, to testify.

Mr. Harrigan: I don't wish to argue it, well, I can argue it now, if you like.

Personally, I'm not too concerned what Jesse says about his records, because the only thing he is going to say is somebody turned something in to me and sooner or later they took it and took it somewhere. He covers from the time they turned it in to the time they took it and if they brought it back, he's got it from the time they brought it back until they took it again, that's space of time, the problem in this isn't like a gun or something else. I anticipate that page 1626 } they're going to have these rather numerous tests on these clothes which involve what is on the clothes, this is what I anticipate, it isn't like a gun where

Jesse E. Wismer

I took it over and I fired it and that is the way it goes. You can't damage it too much, but if somebody is handling these clothes, they take them here and they take them there and so forth, and they are looking for powder marks on clothes and you have got four or five policemen who carry guns all day, carrying these all over, it would seem to me that the people that carried them around ought to be made known to the jury, or how many times they were handled, because this is obviously one of the obvious arguments, when did it get on there?

The Court: I would think that your point would be well taken, whenever an item is taken out of the custody of the Arlington Police and turned over to somebody who takes it away and makes a test on it, but would you consider that your objection would be met by the testimony of the man who had it in his custody for the purpose of the test, as to just what he did?

Mr. Harrigan: It would depend on what the item is.

Mr. Hassan: I think the records will show, Your Honor, when the item was originally received by the person who received it, the signature when they turned it in, page 1627 } the signature when it went to the next step, and that would place it by that time into the property room and the signature out, and who had it and how long it was out, with the times and dates. Most of these items went into the property room, either through the front desk or directly, and went directly from there to the FBI, that includes this coat, after it came back, some items were looked at and it is recorded when they were looked at in the property room. Some items may have been taken out of the property room, that is recorded and, as in the case of the coat and the cap, a new property sheet was made out, these records will show this, but for the most part, every one of these items went directly to the FBI and back and haven't been anywhere.

Seventeen cans of dirt picked up from seventeen different places, they weren't taken out and shown to anybody. They went into the property room and they went to the FBI, and they went back and they're still there.

The Court: I'm not ruling on this now, it seems to me the chain of custody, as far as the Arlington Police Department, is sufficient without requiring the oral testimony of the officers, the man who took it from the cruiser to the desk and the man who took it from the desk to Officer Wismer, and Officer

Jesse E. Wismer

Wismer's custody of it at that time, I think that
page 1628 } would be sufficient.

Mr. Harrigan: I am not talking about that.

The Court: Where things were taken out and handled by somebody else, I think the oral testimony should be required, because you have got the point that it was handled in various ways by parties unknown.

Mr. Harrigan: I would like to know just how they handled it in the property room, I don't know where they put it in there, and they have got all kinds of junk to start with, if they throw it all in one big pile, that is one thing.

The Court: You can cross-examine him in the morning.

Mr. Harrigan: I don't want to give away all my secrets, Jesse.

The Court: Recess until 10:00 o'clock tomorrow morning.

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page 1632 }

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The Court: Ready gentlemen?

Mr. Hassan: Ready, Your Honor.

Mr. Harrigan: Ready, Your Honor.

The Court: Call the Jury.

All right.

Mr. Hassan: Jesse Wismer.

Whereupon, JESSE WISMER, resumed the stand, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Directing your attention to Property Sheet No. 23-873 do you have that with you sir?

A. Yes sir, I do.

Q. And what is that, what property is that a record of?

A. A piece of projectile taken from George Lincoln Rockwell which was stuck in the T-shirt where the—

Jesse E. Wismer

Mr. Harrigan: (Interposing) I object to his reading all his notes. If he has no first hand knowledge—

The Court: (Interposing) The testimony has already been received as to that.

page 1633 } My notation is that that is Exhibit 13.

Mr. Hassan: "A" and "B".

The Court: Yes. 13A and B and there was testimony down to the point where it was delivered to him and not beyond that point. So 13A was admitted into evidence because it was marked, initialled at the scene by Sergeant Kadel; 13B was not marked, it being a piece of projectile so it was simply marked for identification. But there was testimony of it down to the point where it was turned over to Officer Wismer so I think it's all right for him to go ahead now and recite what he is talking about.

Mr. Hassan: I was just trying to identify the items. The property sheets are the official record and the exhibits and I have the exhibit number for each one of these.

The Court: You have to do that I think.

Mr. Hassan: It's just a little ahead of where I intended to do it.

By Mr. Hassan:

Q. When did these items come into the hands of the Police Department?

A. August 25, 1967 at 12:02 p. m.

Q. And did there come a time when you delivered these items out of the control of the Arlington County Police Department?

page 1634 } A. Yes sir.

Q. And when did you do that?

A. 8-25, 1967 approximately 5:30 p. m. I took them to the F.B.I.

Q. Who did you give them to?

A. W. G. Johnson, special agent.

Q. Did there come a time when these items came back into your hands?

A. Yes sir.

Q. And when was that?

A. 8-31, 1967 at 3:00 p. m. I received them from special agent Mr. Johnson.

Q. And have these items been under the control of the Police Department until a day last week or this week?

A. Yes sir.

Jesse E. Wismer

Q. What day was that?

A. Well, I took it out for the Court on 9-28-67.

Q. But it remained in your control?

A. Yes sir.

Q. When did it go out of your control?

A. It went out of my control 12-4-67.

Q. And where did it go then?

A. All items were held by the Circuit Court
page 1635 } this date.

Q. And became Exhibit 13A and 13B.

Mr. Hassan: I would like to have that marked for identification as 51B.

(Whereupon, Commonwealth's Exhibit No. 51B was marked for identification.)

By Mr. Hassan:

Q. Now, I ask you to take a look at Property Sheet No. 23-874 and ask you to state what those items are briefly. Don't read what is on there.

A. Three small plastic bowls.

Mr. Hassan: Which have become Commonwealth's 3A, B and C, Your Honor.

By Mr. Hassan:

Q. And who did the Police Department receive those from?

A. It was received from Dr. Beyer.

Q. And did there come a time—when were they received in the control of the Arlington County Police Department?

A. 8-25, 1967 at 3:20 p. m.

Q. Did there come a time when you delivered these from the control of the Arlington County Police Department?

A. Yes sir.

Q. When did you do that?
page 1636 } A. 8-25, 1967 at 5:30 p. m.

Q. And who did you give them to?

A. Special agent W. G. Johnson.

Q. Where did you give them to him?

A. The F.B.I.

Q. Did there come a time when these items were returned to you?

A. Yes sir.

Jesse E. Wismer

Q. When was that?

A. 8-31, 1967 I received them from Mr. Johnson at approximately 3:00 p. m. at the F.B.I.

Q. Did there come a time when they left your control to come into this Court?

A. Yes.

Q. When was that?

A. 11-28, 1967.

Mr. Hassan: 51C for identification.

(Whereupon, Commonwealth's Exhibit No. 51C was marked for identification.)

The Court: On that point, from whom were those received?
Will you explain that from the beginning, 3A,
page 1637 } B and C?

The Witness: They were received from Dr. Beyer.

The Court: Did he give them directly to you?

The Witness: No sir.

The Court: To whom?

The Witness: Sergeant W. H. Schoupe.

The Court: And Sergeant Schoupe gave them to you?

The Witness: Yes.

The Court: All right.

By Mr. Hassan:

Q. I would like for you to examine Property Sheet No. 23-876 and tell us what those items are?

A. It was a cap, gray, and a tan and dark reversible raincoat.

Q. When did this come into the control of the Arlington County Police Department?

A. 8-25, 1967 approximately 4:30 p. m.

Q. Who received control?

A. John P. Kadel.

Q. Whom did he receive it from?

Mr. Harrigan: Your Honor, he doesn't know that.

Mr. Hassan: His records show it.

Mr. Harrigan: I don't care what his records show. It's pure hearsay as to him. I thought he was on the
page 1638 } stand to testify when he received it and when

Jesse E. Wismer

it went in and out of the property room. He's testifying as to who got it originally and where it went and he has no knowledge of that.

The Court: The objection is over ruled.

I think the records are admissible with exception to the hearsay rule on writings and I will let him testify as to what they contain. They're wholly *prima facie* evidence of the truth of what they contain and I would think they would only be admissible in so far as they recite custody within the Arlington Police Department, whose records they are, when they're out of his custody of the police. I don't think these records can say what happened to the articles. But while in the hands of the Police Department, they are *prima facie* of the truth of what they say.

Go ahead.

By Mr. Hassan:

Q. Who gave—

Mr. Harrigan: (Interposing) Note my exception.

By Mr. Hassan:

Q. Who gave these items to the Police Department?

A. Claudia Freeman.

Q. And did there come a time when you delivered these from the control of the Arlington County Police page 1639 } Department to anyone?

A. No sir. I did not take these to the F.B.I.

Q. You did not?

The Court: Let me back up a minute.

Claudia Freemann gave them to John Kadel who gave them to you?

The Witness: John Kadel turned them over to Officer Skinner.

The Court: Who gave them to who?

The Witness: They were held in a locker of the Police Department until the next man came on tour of duty and he took over control which was Sergeant Burnett who took charge at that change of shift.

The Court: And then what happened?

The Witness: The next man that came in and took them and that was Officer Mitchell and then it was back to Officer Skinner.

Jesse E. Wismer

The Court: All right.

By Mr. Hassan:

Q. Do you know when that was?

A. 8-26, 1967, 4:06 p. m.

Q. And did there come a time when the items came back into the control of the Arlington County Police Department?

A. Yes sir.

Q. And when was that?

A. 8-31, 1967, approximately 3:00 p. m.

Q. And did you receive them?

A. Yes sir. I received them from special agent Mr. Johnson at the F.B.I.

Mr. Hassan: I offer that to be marked for identification as 51D

(Whereupon, Commonwealth's Exhibit No. 51D was marked for identification.)

The Court: Mr. Taylor (the clerk) what are the numbers on the hat and coat for identification?

Mr. Hassan: The hat and coat were Exhibits 43 and 42.

The Court: Thank you.

By Mr. Hassan:

Q. The next property sheet that I want you to look at, Wismer, is 23-879.

Now, what are these items?

A. One man's slacks, one man's black belt, one pair of men's socks, a shirt, man's shoes, and one towel.

Q. And when did they come into the control of the Arlington County Police Department?

A. 8-25, 1967, approximately 5:20 p. m.

Q. And who received them at the Police Department?

A. Detective E. Davis.

Q. And did there come a time when you delivered these out of the control of the Arlington County Police Department?

A. Yes sir.

Q. And when was that?

A. On 8-29, 1967 at 9:15 a. m. I took them to the F.B.I.

Q. And did there come a time when you received them back?

Jesse E. Wismer

A. Yes sir. 8-31, 1967 approximately 3:00 p. m. I received them from the F.B.I.

Q. Does that consist of two sheets?

A. Yes it does. Except on this item No. 5. I received all except item No. 5 on 8-31, 1967. Item 5 was retained at the F.B.I. until 10-3, 1967.

Q. Did you receive it at that time?

A. Yes sir, I received it at that time.

Q. What was item No. 5?

A. Item No. 5 on my slip is one pair of men's shoes.

Mr. Hassan: And that's marked, Your Honor, Exhibit No. 8; and these items represent Commonwealth's Exhibits 8A, B, C, D, E, F, and G. I'd like to have these marked as 51E.

(Whereupon, Commonwealth's Exhibit No. 51E was marked for identification.)

By Mr. Hassan:

Q. Now, directing your attention to property sheet No. 23-882 and I'll ask you when that came into the custody of the Arlington County Police Department?

A. 8-25, 1967, approximately 3:30 p. m.

Q. Who took custody of that?

A. Charles Taylor.

Q. When did he take custody?

A. It was in the headliner of a car in the Arlington County paint shop.

Q. And did there come a time when you delivered that item from the control of the Arlington County Police Department?

A. Yes sir.

Q. And when was that?

A. 8-29, 1967, 9:15 a. m. I took them to special agent W. G. Johnson.

Q. And that is of the F.B.I.?

A. Yes.

page 1643 { Q. Did there come a time when you received it back?

A. Yes sir. 8-31, 1967 I received it from Mr. Johnson at the F.B.I.

Q. And did there come a time when you delivered it to this Court?

A. Yes sir. 12-5, 1967.

Jesse E. Wismer

Mr. Hassan: I'd like to have that marked Commonwealth's Exhibit 51F.

The Court: What is the Exhibit number to which that (indicating) referred?

Mr. Hassan: That is, I believe, Exhibit 16.

The Court: Is it the single shell casing?

Mr. Hassan: It's a fragment.

The Witness: A steel jacket.

Mr. Hassan: Which was removed on the 25th by Taylor in his testimony. I believe it was No. 16

The Court: No. 16 was the one found on the roof.

Mr. Hassan: That was a casing.

The Court: A casing found on the roof of the sign and admitted into evidence.

Mr. Hassan: No. Officer Taylor's testimony, Your Honor, which started night before last and ended I believe yesterday morning.

page 1644 } The Court: This was a steel jacket projectile removed from the headliner of a car?

The Witness: Yes sir.

The Court: At 3:25 p. m. and turned over to Officer Skinner?

The Witness: Yes sir.

The Court: That's it.

(Whereupon, Commonwealth's Exhibit No. 51F was marked for identification.)

By Mr. Hassan:

Q. Now, I direct your attention to property sheet No. 23-883.

Mr. Harrigan: 23 what?

By Mr. Hassan:

Q. (Continuing) 883 and ask you what that was sir?

A. It was tar contained in small pill boxes.

Q. And when did that come into the custody of the Arlington County Police Department?

A. 8-25, 1967 at 2:30 p. m.

Q. And who took custody of that?

A. Charles E. Taylor.

Q. Where did he take custody?

page 1645 } A. At the scene at 6029 Wilson Boulevard.

Jesse E. Wismer

Q. Did there come a time when you delivered the custody of this to someone other than the Arlington County Police Department?

A. Yes.

Q. When?

A. 8-29, 1967, 9:15 a. m. I took it to the F.B.I. and gave it to special agent W. G. Johnson.

Q. And did there come a time when you received it back?

A. Yes sir.

Q. When was that?

A. 8-31, 1967, approximately 3:00 p. m. I received it from Mr. Johnson at the F.B.I.

Mr. Hassan: That's 51G.

(Whereupon, Commonwealth's Exhibit No. 51G was marked for identification.)

The Court: Does your form recite where that tar sample was collected by Officer Taylor?

The Witness: Yes sir. On the roof above 6021 Wilson Boulevard.

The Court: And it was turned at at 5:30 to Officer Skinner?

page 1646 } The Witness: At 5:50 p. m. to Officer Skinner.

The Court: It was collected at 2:30 p. m.?

The Witness: Yes sir.

Mr. Hassan: And that's 22, I believe.

The Court: It's either 22 or 20.

Mr. Hassan: It's the one he obtained on the 25th—he obtained additional ones on the 26th.

The Court: One of those exhibits contains a single tar sample and the other contains two tar samples.

Mr. Hassan: It's a single sample taken on the 25th at 2:30 and marked 22.

The Court: All right.

By Mr. Hassan:

Q. Now, I direct your attention to property sheet No. 23-884 and ask you to summarize what that is?

A. Seven bullet fragments taken from car, different locations on the car.

Q. And where was the car at that time?

A. It was removed from the car at the paint shop property.

Jesse E. Wismer

Q. Who took custody for the Arlington County Police Department?

A. Detective Crickenberger.

page 1647 } Q. And did there come a time when you delivered the custody of this to someone else?

A. Yes sir.

Q. When did you do that?

A. 8-29, 1967 at 9:15 a. m. I took it to the F.B.I. and special agent W. G. Johnson received it.

Q. Did there come a time when you received it back?

A. Yes sir. 8-31, 1967 I received them from Mr. Johnson, special agent, at the F.B.I., 3:00 p. m.

Q. Did there come a time when you delivered them here to the Court?

A. Yes sir. 12-6-67.

Mr. Hassan: I would like to have that marked for identification as Exhibit 51H.

(Whereupon, Commonwealth's Exhibit No. 51H was marked for identification.)

Mr. Hassan: That's Exhibits 50A, B, C, D, E, F, and G.

By Mr. Hassan:

Q. Now, I would like to have you take a look at property record 23-885 and I ask you, sir, to tell us what that is?

page 1648 } A. It's a pill box containing three wooden sticks with tar samples from the back of the building and a pill box containing tar samples from above 6029 Wilson Boulevard.

Q. When did that come into the custody of the Arlington County Police Department?

A. 8-27, 1967, 8:00 a. m.

Q. Who took custody?

A. Charles E. Taylor.

Q. Did there come a time when you delivered that from the custody of the Arlington County Police Department?

A. Yes sir. 8-29, 1967, 9:15 a. m. I took it to the F.B.I. to W. G. Johnson, special agent, received it.

Q. Did there come a time when you received it back?

A. 8-31-67 I received it from Mr. Johnson, special agent of the F.B.I., 3:00 p. m.

Q. Did you deliver that to the Court here in this case?

Jesse E. Wismer

A. 12-5-67.

Mr. Harrigan: When did you say that was? The pill box containing the tar samples from what?

The Witness: 6029 Wilson Boulevard.

The Court: That's two tar samples in that one exhibit. We didn't call it A and B but it's Exhibit 20. My notes said collection from the roof of 6029 and another was
page 1649 } collected from the far corner of the rear wall
of the building.

Mr. Harrigan: Which one is this?

The Court: They relate to both of them.

Mr. Harrigan: Aside from what your notes reflect, Your Honor—

The Court: (Interposing) Item No. 1 and No. 2. Item 1 is a pill box containing three wooden sticks with tar samples from the back of the building. Item 2, a pill box containing samples from above 6029 Wilson Boulevard.

By Mr. Hassan:

Q. Now, directing your attention to property sheet No. 23-886 I ask you what that is a record of?

A. Item No. 1 is a pill box containing green paint chips. Item 2 is a pill box containing white paint scrapings.

Q. And when did that come into the custody of the Arlington County Police Department?

A. 8-27, 1967, 8:00 a. m.

Q. Who took custody?

A. Charles E. Taylor.

Q. Did there come a time when you delivered custody of these items from the Arlington County Police Department?

A. Yes. 8-29-67, 9:15 a. m. I took them to the
page 1650 } F.B.I. special agent, W. G. Johnson received it.

Q. Did there come a time when you received them back?

A. 8-31-67 I received them from W. G. Johnson, special agent, F.B.I., 3:00 p. m.

Q. Did you retain custody until you delivered it to the Court here in this case?

A. Yes sir. 12-5, 1967.

The Court: To whom does it say those were turned over to at the desk when collected?

Jesse E. Wismer

The Witness: They were turned over to the desk sergeant, Willett.

The Court: At what time?

The Witness: 8:07 a. m.

The Court: All right.

That will be Exhibit 19.

Mr. Hassan: That's 19A and 19B.

The Court: Did we separately label those, Mr. Taylor (the clerk)?

The Clerk: 23-886 I have as 19. I just have the tar sample as 19, two pill boxes.

The Court: That's the way I have it.

Mr. Hassan: It's green paint and white paint. Maybe it's A and B.

page 1651 } The Court: Maybe the boxes are separately tagged.

The Clerk: The two boxes are not marked, just the envelope is marked.

Mr. Hassan: Just 19. O. K.

By Mr. Hassan:

Q. Now, I direct your attention to property record 23-910 consisting of two sheets and will you tell us generally what those items are?

A. Pint boxes containing samples of sand and gravel from different locations in the general area.

Q. How many are there?

A. Seventeen.

Q. And who took custody of those for the Arlington County Police Department?

A. Charles F. Taylor.

Q. When did he do that?

A. 8-30, 1967.

Q. And did there come a time when you delivered the custody of these items from the Arlington County Police Department?

A. Yes sir.

Q. When was that?

A. 8-31, 1967 at approximately 2:55 p. m. I
page 1652 } took them to the F.B.I.; Thomas L. Hughes,
special agent, received them.

Q. Did there come a time when you received them back?

A. Yes sir. 10-3, 1967, approximately 10:20 a. m. I received them from special agent, Mr. Hughes, at the F.B.I.

Jesse E. Wismer

Q. And did you have custody of them until they were delivered to the Court in this case?

A. Yes sir. 12-5.

Q. Now, I direct your attention—

The Court: (Interposing) That had seventeen items. Then that would have to be Exhibits 23 through 39?

Mr. Hassan: 23 through 39, yes, Your Honor, I believe that's right.

By Mr. Hassan:

Q. Now, directing your attention to property sheet No. 24-0116 I ask you sir what items are covered by that?

A. Seven bullets. There's four bullets in—one, two, three bullet casings.

Q. Four bullets and three bullet casings?

A. Yes sir.

Q. And who took custody of those for Arlington County Police Department?

A. Stuart E. Crickenberger.

Q. Where did he take custody?

page 1653 } A. Pasture and rear of the Sam Ervin farm,
McDowell, Virginia.

Q. And did there come a time when you delivered those from the custody of the Arlington County Police Department?

A. Yes sir.

Q. And when was that?

A. 9-19, 1967.

Q. And who did you deliver them to?

A. I delivered them to special agent, Warren G. Johnson of the F.B.I.

Q. Did there come a time when you received them back?

A. 10-3, 1967 I received them from Mr. Johnson, special agent of the F.B.I.

Q. Did you have custody until you produced them here in Court in this case?

A. Yes sir. 12-6, 1967.

The Court: What date did Crickenberger receive those, take custody of those?

The Witness: 9-16, 1967.

Jesse E. Wismer

By Mr. Hassan:

Q. Now I direct your attention to property record 23-875 and ask you sir what that is?

A. That is a pistol.

page 1654 } Q. And did there come a time when you received this from someone other than an Arlington County policeman?

A. Yes sir.

Q. When was that?

A. 8-31, 1967 I received this from Mr. Johnson, special agent at the F.B.I.

Q. Your records show how and when it got to the F.B.I.?

A. Yes sir.

Q. What does it show?

A. It says that Officer Beakes received custody of it and transported it directly to the F.B.I. laboratory.

Q. When was that?

A. 8-26, 1967.

Q. And from the time you received it back from the F.B.I., it's been in your custody until you put it in the Court here?

A. Yes sir. 12-5, 1967.

Mr. Hassan: That is Exhibit No. 44A.

By Mr. Hassan:

Q. Now, I would like to direct your attention to property record 23-876 and ask you, sir, what that relates to and what is it?

A. 23-876 we already had.

page 1655 } Q. Is there not a second record?

A. Yes sir.

Q. What is the second record?

A. The second record is when evidence is taken out for some reason and the property room is closed, it's turned back during the hours we are closed, it's retained at the counter and put in a locker and locked up and this property sheet is a continuation of the chain of evidence.

Q. And a new property sheet is made up?

A. A new property sheet is made up.

Q. Do you have that there?

A. Yes sir.

Q. What does that indicate with regard to this evidence?

A. That Stuart Crickenberger took the evidence out 9-9,

Jesse E. Wismer

1967 and 9-9, 1967 at 3:15 p. m. he returned it back to the Police Department.

Q. And has it been in your custody ever since he returned it back?

A. In the property room it was retained 9-11, 1967 by me where its been ever since.

Q. Until you produced it here in this Court in this case?

A. Yes sir. 12-5, 1967.

page 1656 } The Court: What does this relate to?
Mr. Hassan: The coat and cap and—
The Court: (Interposing) That's 42 and 43?

Mr. Hassan: Yes sir.

The Court: Mr. Taylor, are you up to 51N?

The Clerk: "N", yes sir.

Mr. Hassan: I believe I have no further questions of this witness, Your Honor.

Mr. Harrigan: Let me see what you're reading, Jesse.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Who fills these out?

A. The officer that turns them in.

Q. Who turned this cap and coat in? Kadel?

A. John P. Kadel, yes.

Q. Did they have a size on that hat?

A. Yes sir.

Q. They did?

A. Yes sir.

Q. What was it?

A. Seven and a half.

Q. You say this is the same hat? What size is that?

A. Seven and a quarter.

page 1657 } Q. Then somebody is wrong, either your records or the hat, isn't it?

A. Yes sir.

Q. All right.

Let me see another one of your records. Have you got another one? Give me another. Anyone will do.

Now this page lists two, three pieces of evidence. All right.

A. No, just two pieces of evidence.

Q. What are they?

Jesse E. Wismer

A. Pieces of projectile taken from George Lincoln Rockwell and a spent cartridge case found on the ground.

Q. Now, in whose possession were those items?

A. They were in Sergeant Kadel's.

Q. Where did he get them from?

A. 6021 Wilson Boulevard.

Q. What person?

A. It's marked Forsythe.

Q. He got all of those items marked "Forsythe"?

A. To the best of my knowledge.

Q. He got the bullet from Rockwell's T-shirt marked "Forsythe"?

A. Item No. 1 says "piece of projectile taken from George Lincoln Rockwell, stuck to his T-shirt and skin page 1658 } where bullet entered the body and heart." Item No. 2, "spent cartridge found on the ground asphalt, near the car of Rockwell."

Q. Did it say under the car or near the car?

A. Near the car.

Q. Who did you say Kadel got that first piece of property from, if anybody?

A. From—Item No. 1? It doesn't say.

Q. Well, how do you know he got that Item No. 2 from Forsythe?

A. I don't know. It's just the last person in possession of property and marked for Forsythe.

Q. Do you know who Forsythe is?

A. No sir.

Q. He's a kid, a small boy.

Now, let me see one more.

You've got a notation on here on some clothes, men's slacks, black belt, pair of men's socks; I see you've got some shoes, one pair of men's shoes had some tar on the left sole or something. You've got that notation "in the shopping bag". What does that mean?

A. It means when we received it, it was in a shopping bag.

Q. Does that mean all of this was in a shopping bag? page 1659 }

A. Yes sir.

Q. The clothes and the shoes?

A. Yes sir, when they came to us.

Q. So if any tar was on the shoes, it would probably be on the clothes by this time, wouldn't it?

A. This I don't know, sir.

Walter E. Bell

Q. Do you have 23-876—forget it.

Mr. Harrigan: That's all.

Mr. Hassan: No further questions of this witness.

The Court: Do you propose to introduce copies into evidence?

Mr. Hassan: That's what I thought we agreed to yesterday, instead of the original records, I could introduce the photostatic copies. I've had the photostats marked but I don't intend to do it at this time, not until I get through with everything that happened before.

The Court: Officer Wismer, you're excused.

Mr. Hassan: He can be excused subject to recall. There is no more property out there for him to stay with but he's available at any time we want him.

The Court: You're excused subject to recall, sir.

Next witness, Mr. Hassan.

page 1660 } Mr. Harrigan: Was there some motion made to introduce something?

The Court: No.

Mr. Hassan: Not at this time.

Inspector Bell?

Mr. Harrigan: Those property sheets are not in evidence?

Mr. Hassan: No. They're marked for identification, 51A through N.

Inspector Bell.

Whereupon, WALTER E. BELL, was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Walter E. Bell, Assistant Chief of Police, Arlington County.

Q. And what is your specific duties in the Police Department, Inspector Bell.

A. I'm in charge of the Services Division of
page 1661 } the Police Department.

Q. Now, I would like to show you Common-

Walter E. Bell

wealth's Exhibit No. 51B for identification, sir, and ask you whether or not your signature appears thereon?

A. Yes sir, it does.

Q. And will you state the occasion for your signature appearing on that sheet?

A. Yes sir.

That was authorized release of a piece of property or two pieces of property to go to the F.B.I. laboratory.

Q. Who did you authorize their release to?

A. Sergeant Peever.

Q. In your presence, were they released to him?

A. Yes sir.

Q. Where were they released to him?

A. In the Communications Section.

Q. What was the occasion for them being there instead of the property section?

A. When the property room is not open, the property is retained by a specific officer in the Communications Section until someone is on duty in the property room and until such time as it is transferred to the property section.

Q. Was this property—had this property
page 1662 } gone in the property section prior to the time
you released it?

A. May I refer to this (indicating)?

Q. Yes.

A. No sir, it had not been to the property section prior to that.

Q. Now, who had had custody of this for the Police Department prior to the time you released it?

A. Prior to the time it was released, it was brought in by the officer who had taken control of it at the scene and was handled by a series of officers who took responsibility while on duty in the Communications Section.

Q. Could you describe this word "handled by a series of officers" more specifically?

A. Yes sir.

There is a designated locker in the Communications Section which is kept locked and one of the officers on duty during each shift is delegated to be responsible for anything that comes in. He takes possession of that property when he comes on duty and is responsible for the retaining of it until he goes off duty when it is then signed on to the next person coming on the shift.

Walter E. Bell

Q. Does he take possession of the property or does he take possession of the locker or something else?
page 1663 } A. He takes possession, he checks it against the property slip in the locker to see that he has the items, per item inventory, and signs for it on each sheet.

Q. And when he goes off duty, what does he do?

A. When he goes off duty, a man from the relieving shift who has been designated goes through the same procedure and signs for the property at that time.

Q. Then directing your attention to the bottom of that first page of the sheet, is that a list of the communications officers who passed control from the time it was received until it went into the hands of the property officer or in this case the hands of Sergeant Peever?

A. Yes, except for two original names. The one who turned it in, Lieutenant Kadel; and the last on here, Sergeant Peever?

Q. These are communication men who had control during their shift?

A. The balance of them are, yes sir.

Q. Did you see the property at that time?

A. Yes sir.

Mr. Hassan: I have no further questions of this officer.

The Court: Inspector Bell, when the property
page 1664 } in custody of the Communications Section is transferred from one officer in the Communications Section to his relief, are the items which are locked up which you testified to, removed from the box and physically handled in any way or are they removed from the box?

The Witness: They are not removed from the packaging but are inspected with so many items which is checked with the list and signed.

The Court: All right.

Mr. Harrigan?

Inspector, do you have personal recollection of these items, a cap and a coat?

The Witness: Yes, I viewed the items at the time. I went to the counter with Sergeant Peever and these items were turned directly over to him in my presence.

The Court: Do you recollect whether they were encased in any kind of wrapping or not?

The Witness: They were in plastic containers as I recall.

Walter E. Bell

The Court: Do you recall whether or not they were removed from those plastic containers?

The Witness: They were placed in that plastic container at that time, Your Honor.

page 1665 } The Court: When they were turned over to Sergeant Peever to be taken out of the locker?

The Witness: Yes sir.

The Court: And prior to that time, had they been in any container to your knowledge?

The Witness: My recollection is a paper container, sir. The Communications Section does not have the plastic bags or anything there that would be necessary to transport them to the property section.

The Court: So that while in the locker, they were in some kind of a paper container?

The Witness: Yes. That's my recollection.

Mr. Harrigan: You say that's what happened, that they were in a paper container.

Mr. Hassan: I'm going to object Your Honor.

You asked what his recollection was.

Mr. Harrigan: I think I have a right to cross examine.

Mr. Hassan: I don't think you have a right to cross examine when the Judge has a question of that kind.

The Court: The objection is over ruled.

Go ahead.

CROSS EXAMINATION

page 1666 } By Mr. Harrigan:

Q. You say that was your recollection. Does that mean you're sure or you're not sure?

A. I could not state definitely whether it was a paper container, Mr. Harrigan.

Q. Well, now this locker that you say things are put into, is this one big locker?

A. Yes sir.

Q. So that everything that is turned in is put in the same locker presumably?

A. Yes sir.

Q. Is that right?

A. Yes sir.

Q. What else was in the locker that day?

Walter E. Bell

A. I could not answer that. I did not remove those items from the locker myself.

Q. Where was this placed in the locker?

A. I don't know, sir. I was on the one side of the counter and the locker was on the other so it was not visible from that side.

Q. Does the officer that's coming on duty open that locker to see what's in there?

A. The officer who takes the responsibility page 1667 } for the items does.

Q. He does?

A. Yes sir.

Q. And does he handle it or push it to one side and see what's around in there?

A. The only handling that would be necessary to see if he saw the items he had signed for.

Q. Everything in there he signs for, doesn't he?

A. Yes sir.

Q. So they are right—he would have to see if everything was there?

A. Yes sir.

Q. I want you to look at this. Now, this says Kadel, Skinner, Burnett, Mitchell and Skinner apparently checked this?

A. Yes sir.

Q. One time or another, is that right?

A. Yes sir.

Q. And presumably 26-67 it was checked out to Peever?

A. Yes sir.

Q. Now, the next entry on this is 9-6-67, is that right?

A. On this side, yes sir.

Q. And it's the same entry on this side?

A. Yes sir.

page 1668 } Q. All right.

Now, when was it returned on 9-6-67, that's taking it out on the right hand side, the left hand side, isn't it?

A. Yes it is.

Q. And this is returning it on the right hand side?

A. Yes sir.

Q. All right.

9-6-67, the next entry, when was it returned?

A. I think you'll find there's another sheet that goes with this.

Walter E. Bell

Q. This is not the complete picture then?

A. There would be another log. I don't have the other evidence with me but I would think there's another sheet to go with that.

Q. You're stating that it doesn't reflect when Peever brought it back?

A. I'm saying this is one transaction and a part of this transaction is one record.

Q. What you're saying in effect is this doesn't say what happened from 8-26 until it was brought back, does it?

A. There would be another record showing that.

Q. Answer my question. This doesn't show it was brought back?

page 1669 } A. No sir.

Q. It would be in some other record you say?

A. Yes sir.

Q. All right.

So if it was brought back and turned in, back over into the Police Station, it would be on some supplemental sheet and go back there into that locker?

A. That's correct, sir.

Q. All right.

The Court: Mr. Hassan?

REDIRECT EXAMINATION

By Mr. Hassan:

Q. I show you Commonwealth's Exhibit No. 51N for identification and ask if that's the other sheet to which you were just referring?

A. Yes sir, it is.

Mr. Hassan: No further questions.

Mr. Harrigan: Let me see that one.

RECROSS EXAMINATION

By Mr. Harrigan:

Q. Now, you say this is your supplemental sheet and this will reflect what happened between 8-26 and the next date on there is what?

page 1670 } A. 9-6.

Walter E. Bell

Q. 9-6.

And this would reflect that, right?

A. Yes sir.

Q. What is the first entry on there?

A. The first entry on here is date 9-9-67.

Q. All right.

So, if this one shows it was checked out 9-6-67 by Crickenberger and checked in 9-6, checked out at 11:30 and checked in half an hour later 9-6-67, where's the entry that shows where it was from 8-26 up to 9, September 6?

A. The entry here is, this was returned on a new report. The property room was closed, 9-9-67.

Q. It was already in there, wasn't it, according to the other report?

A. Yes. Apparently Sergeant Crickenberger did answer that. He opened it for inspection on 9-6-67 and it was done in the property room according to the signature of Officer Wismer.

Q. So there's three days we cannot account for?

A. I personally cannot account for them.

Q. The record doesn't reflect it either, does it?

Mr. Hassan: I'm going to object to that, Your page 1671 } Honor. The records reflect what they reflect. Whether Inspector Bell recognizes it or not, is not material.

The Court: The objection is over ruled.

Mr. Harrigan: I think the records speak for themselves.

Mr. Hassan: That's exactly what I said, Mr. Harrigan.

The Court: That seems to me to be an agreement.

FURTHER EXAMINATION BY MR. HASSAN

By Mr. Hassan:

Q. Will you tell me who Joseph Parsons is in the middle of the page on the back there?

A. Mr. Parsons is an F.B.I. laboratory man.

Q. And is there an entry there where Mr. Wismer did something with this property?

A. Yes. 8-31-67 received from the F.B.I. all items from Mr. Johnson, F.B.I., 3:00 p. m., Officer Wismer's signature.

Q. And there is no time notation besides the name Joseph Parsons?

A. No notation there other than Officer Wismer's notation.

George S. Peever

Q. Does that indicate to you where this property was during the time that Mr. Harrigan was referring to?

A. Yes sir.

Q. Where was it?

page 1672 } A. During this period of time, from 8-31 until 9-6 it would have been in the possession of Officer Wismer.

Q. And prior to that time—what time did you release it to Sergeant Peever?

A. 8-26 and until 8-31 it would have been in the possession of the F.B.I. laboratory.

Mr. Hassan: Thank you. No further questions.

The Court: May the witness be excused?

Mr. Hassan: He may be.

Mr. Harrigan: Let me look at those.

The Court: Mr. Harrigan, I don't think I'm going to let you have any further recross. He didn't open up any new matter on this.

Mr. Harrigan: All right.

Mr. Hassan: Sergeant Peever.

Whereupon, GEORGE S. PEEVER, was recalled as a witness, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name, sir.

A. George Peever.

page 1673 } Q. You've previously testified in this case?

A. Yes I have.

Q. I'd like to show you Commonwealth's Exhibit 51D for identification, sir, and ask you whether or not your signature is on that?

A. Yes it is.

Q. And what was the occasion for you signing that sheet?

A. I received this property at 4:06 p. m. on the 26th of August.

Q. And who did you receive it from?

A. Officer Skinner.

Q. Now, where did you receive it?

George S. Peever

A. At the police counter.

Q. And who authorized its release to you?

A. Inspector Bell.

Q. When you received it, can you describe whether it was in a container or not?

A. The items were in a—to the best of my recollection they were in a clear plastic container, plastic bag.

Q. Did you put them in that bag?

A. No.

Q. And what did you do with these items when you received them?

page 1674 } A. After I signed the slip, I transported them to the F.B.I. Headquarters.

Q. And did you take them out of the plastic container at any time?

A. No.

Q. And who did you give them to at the F.B.I.?

A. Mr. Parsons.

Q. Mr. Parsons?

A. Um hmm.

Q. Now, Detective, I call your attention to Commonwealth's Exhibits No. 8A through 8B through 8G which are the clothing taken from John Patler at the jail. Were you present when they were taken?

A. Yes I was.

Q. And who took them?

A. Who took them from the defendant?

Q. Yes.

A. Well, we were in the jail office and Mrs. Lane was present and we asked—we wanted his clothes. So we asked John—we wanted his clothes but being as Mrs. Lane was present we didn't want him undressing in front of Mrs. Lane so he stepped in the infirmary and handed them to Detective Wilkinson.

page 1675 } Q. Did he take his own clothes off?

A. I don't know.

Q. You didn't see him?

A. No.

Q. What happened to them?

A. Wilkinson handed them to Detective Davis and they were placed in a shopping bag.

Q. And you saw this occur.

Do you know from your own recollection whether or not there were any socks?

George S. Peever

A. Yes.

Q. Could you identify the socks?

A. Well, they were just a pair of dark or black socks.

Q. You put no marks on them of any kind?

A. No.

Q. But they were placed in the shopping bag by Detective Davis and taken by him?

A. Yes.

Mr. Hassan: I have no further questions of this witness.

The Court: Any cross examination?

CROSS EXAMINATION

By Mr. Harrigan:

page 1676 } Q. Now, these items you picked up at the
police counter; you said they were in a plastic
bag when you picked them up, is that right?

A. Yes, a bag or in plastic. They were wrapped up, yes.

Q. And do you know when they were wrapped up?

A. No. They were just handed to me and I signed for them.

Q. Did you tell them you were on your way over to get them?

A. I didn't. Inspector Bell told Sergeant Skinner to release them to me.

Q. Were they in that little vault down there or whatever you call it at the police station?

A. I received them at the counter, yes.

Q. All right.

Now this bag that you put the clothes in—well, let me ask you this:

What items did you take from the jail that belonged to John Patler?

A. The items of clothing?

Q. All of them.

A. His trousers and the belt, a shirt, socks, and shoes.

Q. All right.

page 1677 } Now this bag, where did you get that bag
from?

A. Well, we asked one of the deputies if anybody up in the jail had something to carry them across the street in and they brought us the shopping bag.

Q. I see.

And they were put in that shopping bag?

Joseph P. Parsons

A. Yes sir.

Mr. Harrigan: That's all.

Mr. Hassan: No further questions.

The Court: You're excused.

Mr. Hassan: Mr. Parsons.

Whereupon, JOSEPH P. PARSONS, was called as a witness on behalf of the Commonwealth, and having been duly sworn was examined and testified as follows:

Mr. Harrigan: May we approach the bench?

The Court: Yes.

* * * * *

Conf.

11/28/67

page 2 }

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Mr. Harrigan: Your Honor, we would object to the testimony of Mr. Parsons. Apparently it's going to be an analysis of what was on the clothes.

Mr. Hassan: No it isn't. We're just wasting time. Mr. Parsons just happened to be on duty on Saturday and he signed this sheet. He signed this sheet, and he turned them over to Mr. Johnson who is my next witness.

I'm just tying in the chain of custody. I've got two questions of this witness.

Mr. Harrigan: Okay.

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Joseph P. Parsons, special agent, F.B.I.
page 1678 }

Q. Sir, I would like to direct your attention to Commonwealth's Exhibit No. 51D and ask you, sir, whether or not your signature appears thereon?

A. Yes it does.

Q. And what was the occasion for your placing your signature there, sir?

Joseph P. Parsons

A. Upon receipt of evidence presented to me by Sergeant Peever on August 26th, past.

Q. And where were you when you received that sir?

A. I was standing at the entrance door to our F.B.I. laboratory at 9th and Pennsylvania Avenue, Washington, D. C.

Q. What did you do with that, sir, when you received it?

A. I took it back to my desk where it remained until I turned it over to our examiner, Mr. Johnson.

Q. Did you make any examination of this evidence?

A. I did not.

Q. I would like now to show you Commonwealth's Exhibit No. 51N and ask you whether or not your signature appears thereon?

A. Yes it does.

Q. What was the occasion, sir, for your putting your signature on that Arlington County form?

page 1679 } A. This was a receipt I signed for the evidence that I received at that time.

Q. And at the same time of the other evidence?

A. Yes sir.

Q. Did you also receive that from Sergeant Peever?

A. Yes sir.

Q. Did you conduct any examination of that evidence?

A. I did not.

Q. What did you do with that, sir?

A. I kept it in my custody until special agent Johnson came on duty at which time I turned it over to him.

Mr. Hassan: Thank you very much, sir. No further questions of this witness.

CROSS EXAMINATION

By Mr. Harrigan:

Q. You say that you kept this in your custody?

A. That's correct.

Q. You're talking about your desk?

A. Yes sir.

Q. You left it—when did you turn it over to Johnson, the same day or a couple of days later?

A. No. The same afternoon, it was approximately 4:30.

Q. All right.

page 1680 } What day was that, do you remember?

A. It was Saturday, August 26th.

Joseph P. Parsons

Mr. Harrigan: Thank you. That's all.

Mr. Hassan: My next witness is Mr. Johnson.

The Court: Ladies and gentlemen, we will recess at this time for lunch until 1:30.

All right. Mr. Harrigan?

Mr. Harrigan: Mr. Johnson, I take it, is going to testify that he did certain examinations on the hat and presumably on the coat.

Mr. Hassan: Mr. Johnson is the ballistics man.

Mr. Harrigan: That's all he's going to testify to?

He's going to testify that he made certain microscopic examinations.

Mr. Hassan: He may. I have six altogether who did all the examinations. Five are here today, one is in Florida but he will be in in the morning. I don't know just which ones but all examined whatever they did examine and did whatever they did, too. It's not just one man.

Mr. Harrigan: Well, Johnson is a ballistics man and we do know that. He says he is. And presumably he's going to testify as to the certain particles or bullet that page 1681 } was found at the scene and certainly the bullets that were found at a farm in Highland County.

Our position on the bullets in Highland County at this time is, there has been absolutely no evidence in the case which would indicate that linking those bullets at the farm with the defendant, John Patler, and in view of that lack of foundation connecting anything found at the farm up with Patler at this time, we think the ballistics testimony, presuming that it is what he's going to do, would be very prejudicial in the event they do not link it up with Mr. Patler. And it's a question of order of proof.

We've gone through this I know. But when you get an item after item of evidence in front of a Jury and if they do not link up those bullets as having been fired by John Patler and the Court moves to strike that evidence, it will not erase it from the Jury's mind and Mr. Johnson should not be allowed to testify in that regard because it would merely mount one inference on another inference on another inference and certainly you can't base any condition on an inference and a presumption on a presumption.

The Court: Let me ask. I don't know what the Commonwealth's proof will be but if they should establish on it that the bullet found in Highland County matched the

page 1682 } gun found in Arlington County and then they have the testimony of the man who saw the defendant, so he testified, holding target practice up there on that farm but doesn't specifically say where or what date, wouldn't that be enough to go to the Jury on that firearm.

Mr. Harrigan: The man who testified about that said he didn't know what kind of a gun he was using, that he didn't watch him target practice, that he was painting the fence. You would have to infer he had possession of that gun and fired that gun and you would also have to infer at that time he was target practicing that he used that gun and in view of all the other evidence there were holes in all the trees down there and I don't think that inference is a Jury question. It's just compounding inferences and when you view a situation, even circumstantial evidence where the facts are just as consistent with innocence as they are with guilt there's just no Jury question at that point because the Jury cannot arbitrarily adopt that portion which is consistent with guilt and here we have nothing other than bare inferences which would tie him in with that particular target shooting. The only evidence was that he was target shooting. He didn't know if it was a shotgun or a pistol. There's no testimony as to where he was target shooting and our position is that

page 1683 } that is not the type of evidence which is a Jury question. That it has to be a stronger tie in than that.

The Court: Mr. Hassan?

Mr. Hassan: If Your Honor please, I haven't completed my case but for the sake of argument let's assume when this case is over all that Mr. Harrigan says is true. It will never get to the Jury but don't think I'm going to spend all this time if this is as little proof as I'm going to have because I think that gun's tied in at this point where an expert can testify to it. At this point, it doesn't need to be tied into the defendant. At this point, it only needs to be tied into the deceased. We'll get to this question of tying it into the defendant later. We can't try this case all the time. If you adopt his argument, you'll never get an expert on the stand until after a Jury's conviction and it's not a question of inference, it's a case of chain of circumstances and a chain of circumstances is stronger than an eye witness and we have it here and I don't think I'm ready to rest my case and I don't think his Motion to Strike is in order and that's all it is.

If the Court feels that's all I've got, when this is over the Jury will never be prejudiced by anything that goes on be-

Warren G. Johnson

page 1684 } cause it will never get to them but I'm not putting anything in here that will prejudice the Jury when they get the question. It ties up tighter. I wouldn't be wasting my time on it if it didn't.

The Court: Motion is denied.

Mr. Harrigan: Exception.

The Court: The Court will recess until 1:30.

(Whereupon, the hearing was recessed, to reconvene at 1:30 p. m.)

page 1684-A } AFTERNOON SESSION
(1:30 p. m.)

The Court: Call the Jury.

Whereupon, WARREN G. JOHNSON, was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Warren G. Johnson. I'm a special agent of the Federal Bureau of Investigation.

Q. Now, Mr. Johnson, I'm going to show you Commonwealth's Exhibit 51A for identification, sir, and ask you whether or not your signature appears thereon?

A. Well, this is a Xerox copy.

Q. Yes, I know.

A. The signature appears as being mine, yes sir.

Q. What was the occasion for putting that on there, sir?

A. This relates to evidence I received from Officer Wismer of the Arlington County Police Department.

Q. Does it indicate when, sir?

A. Yes sir. On August 25, 1967.

page 1685 } Q. And does it indicate the date and when you returned it to Officer Wismer?

A. Yes sir, it does.

Q. When was that, sir?

A. That was August 31, 1967.

Warren G. Johnson

Q. I show you Commonwealth's Exhibit 51B and ask you sir, whether or not your signature appears on that one?

A. This is again a Xerox copy and the signature is that I placed on there, yes sir.

Q. And does it show who you received it from and when?

A. Yes sir.

Q. And who you gave it to and when?

A. This relates to receipt of evidence I received from Officer Wismer on August 25, 1967 and that I returned it to him on August 31, 1967.

Q. I show you Commonwealth's No. 51C, sir, and ask you whether or not this has your signature and if it indicates what you have been testifying to on the other evidence?

A. Yes sir. This again has my signature relating to items of evidence I received from Officer Wismer on August 25, 1967 and that I returned it to him on August 31, 1967.

Q. Now, sir, I show you Commonwealth's No. 51D and ask you, sir, whether or not that has your signature page 1686 } on there?

A. No sir. This does not.

Q. Do you recognize the signature that is on there?

A. The signature on here is Joseph P. Parsons.

Q. And did there come a time when you received those items from Mr. Parsons?

A. Yes sir.

Q. When was that, sir?

A. This was on the 26th day of July, 1967—excuse me. August, 1967. I'm sorry.

Q. August?

A. Of 1967.

Q. And does it indicate on there when you turned that over to somebody?

A. Yes sir. It does. These items of evidence were turned over to Officer Wismer of the Arlington County Police Department on August 31, 1967.

Q. Now, I show you Commonwealth's Exhibit for identification No. 51E and ask you, sir, whether or not your signature appears on that photostatic copy?

A. Yes sir, it does.

Q. And does that indicate when you received it and from whom?

A. Yes sir, it does.

page 1687 } Q. When was that sir?

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A. This is an item of evidence I received from Officer Wismer on the 29th day of August, 1967.

Q. And did you return them to Officer Wismer?

A. Yes sir, I did.

Q. What date sir?

A. On the 31st day of August 1967 and it relates to another item of evidence listed as No. 5 that I returned to Officer Wismer on the 3rd day of October, 1967.

Q. What was the item No. 5?

A. I believe it was a pair of shoes because item No. 5 listed on this property record is one pair of men's shoes, blue in color.

Q. I show you Commonwealth's Exhibit 51F for identification and ask you, sir, whether your signature is on that?

A. Yes sir, it is.

Q. Does that indicate when you received it, from whom and when you returned it and to whom?

A. Yes sir.

Q. What are the dates?

A. These are items of evidence I received from Officer Wismer on the 29th day of August, 1967 and that I returned it to Officer Wismer on the 31st day of August, page 1688 } 1967.

Q. I show you Commonwealth's Exhibit No. 51G for identification and ask you whether or not your signature is on that, sir?

A. Yes sir, it is.

Q. And who did you receive it from?

A. These items of evidence were received by me from Officer Wismer.

Q. And on what date did you receive them?

A. These were received on the 29th day of August, 1967.

Q. And were they returned, sir?

A. They were returned by me to Officer Wismer on the 31st day of August, 1967.

Q. I show you Commonwealth's Exhibit No. 51H and ask you, sir, whether or not your signature is on that?

A. Yes sir, it is.

Q. Does that indicate from whom you received it and what date?

A. Yes sir, it does.

Q. When was that, sir?

A. This relates to items of evidence I received from Officer Wismer on the 29th day of August, 1967.

Warren G. Johnson

Q. Did there come a time when you returned these items?

A. Yes sir.

page 1689 } Q. What date was that and to whom?

A. I returned these items of evidence to Officer Wismer on the 31st day of August, 1967.

Q. I show you Commonwealth's Exhibit No. 51-I for identification and ask you if your signature appears on that?

A. Yes sir, it does.

Q. And from whom did you receive it and on what date, sir?

A. These are items of evidence which were received by me from Officer Wismer on the 29th day of August, 1967.

Q. And did there come a time when you returned these items and to whom and on what date?

A. Yes sir. They were returned to Officer Wismer on the 31st day of August, 1967.

Q. I show you Commonwealth's Exhibit No. 51J for identification and ask you, sir, whether or not your signature appears on that?

A. Yes sir, it does.

Q. And from whom did you receive it and on what date sir?

A. These are items of evidence which were received by me from Officer Wismer on the 25th day of August, 1967.

Q. And to whom were they returned and on page 1690 } what date, sir?

A. They were returned to Officer Wismer on the 31st day of August, 1967.

Q. And I show you Commonwealth's Exhibit No. 51K for identification and ask you whether or not your name appears on that one, sir?

A. No sir, it does not.

Q. And did you handle those items in any way?

A. No sir, I did not.

Q. I show you Commonwealth's Exhibit No. 51L for identification and ask you, sir, whether or not your signature appears on that?

A. Yes sir, it does.

Q. And from whom and when did you receive those, sir?

A. The items of property listed on this log were received by me from Officer Wismer on the 19th day of September, 1967.

Q. And to whom were they returned, sir, and on what date?

A. These items of evidence were returned to Officer Wismer on the 3rd day of October, 1967.

Warren G. Johnson

Q. I show you Commonwealth's Exhibit No. 51M for identification and ask you, sir, whether or not your signature appears on that?

page 1691 } A. No sir, it does not.

Q. Who received that, if you know, sir?

A. The signature here as the receiving party is Joseph P. Parsons.

Q. And did there come a time when you received those items?

A. Yes sir, there was.

Q. And when did you receive them?

A. I received the items of evidence listed on this receipt on the 26th day of August, 1967.

Q. Did there come a time when you returned that to anyone?

A. Yes sir, there was.

Q. Who did you return it to?

A. I returned it to Officer Wismer.

Q. On what date, sir?

A. On the 31st day of August, 1967.

Q. Now, what is the nature of your occupation with the Federal Bureau of Investigation, sir?

A. I'm assigned to the F.B.I. laboratory where I make examinations of firearms and ammunition specimens for the purpose of determining whether or not a particular bullet or cartridge case is fired and from a particular weapon. I conduct a number of miscellaneous types of examinations connected in this particular field.

Q. Now, what makes such identification possible?

A. Various processes used in the manufacture of a weapon leaves marks in this weapon that are characteristic of one weapon and one weapon alone. By test firing a bullet or cartridge case of a particular weapon and then making a microscopic comparison of these marks they are reproduced on the tests. And then by comparing these marks with the bullet or cartridge case, it's possible to determine whether or not a particular bullet or cartridge case was fired in a particular weapon.

Q. Now, sir, what is your educational background for this type of work?

A. I have a Bachelor of Science degree from Michigan State University.

Warren G. Johnson

Q. And what special training have you had in your present work?

A. While at Michigan State University I spent approximately one year in the Police Science Laboratory there. After being assigned to the F.B.I. laboratory, I underwent an extensive training period under the guidance of experienced experts in this field. During that time I made microscopic examinations and comparisons of
page 1693 } of thousands of bullets or cartridge pieces.
I read the literature in this field. I conducted research and generally familiarized myself with the weapons and their operation and manufacture.

Q. Has there come a time, sir, when you have testified in any Court?

A. Yes sir, I have.

Q. In what Courts have you testified?

A. I've testified in Federal Courts and in State Courts, probably thirty states.

Q. And about how many times have you testified as an expert, sir?

A. I don't know exactly, probably a hundred.

Q. And have you written any books or conducted any courses in this subject?

A. I regularly lecture on this field to police officers, government investigators and that type. I have not actually prepared any publication in this field.

Q. Did there come a time, sir, when you studied any of the items that you received from Officer Wismer of the Arlington County Police Department?

A. Yes sir.

Q. And what items were they, sir?

page 1694 } A. On the 25th day of August, 1967, I received a bullet jacket, three fragments of lead, and two cartridge cases.

Q. Sir, I'd like to show you Commonwealth's Exhibit 3A, B, and C and ask you, sir, if you will look at those and tell me if those are items which you examined in your study of the matters referred to in the property sheets which you have identified your signature on.

A. The three items, Commonwealth's Exhibit No. 3A, B, and C are the three lead fragments that I referred to previously.

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Q. And now, did you make any identification marks on those envelopes?

A. Yes I did.

Q. What marks are those, sir?

A. I have Q4WJ, and Q5WJ, and Q6WJ.

Q. On those items themselves, did you make any marks?

A. On items 3C and 3A—on item 3C I have Q6WJ; on Commonwealth's A, I have Q5J; on Q4, I did not see a mark on it at that particular time, however I see one on the container. Yes sir, I did mark this item also.

Q. You marked the item itself?

A. 3B has the Q4 and WJ on it, yes sir.

page 1695 } Q. What about the other two items, did you mark on the fragment itself?

A. Yes sir, I did.

Q. Now, sir, I'd like you to examine Commonwealth's Exhibit No. 16 and ask you sir if you have examined that? Did you mark that envelope in any way?

A. Yes sir, I did.

Q. How did you mark that envelope?

A. This envelope has my autographic initials WJ plus the Q2.

Q. Will you open it, sir, and tell us whether you've studied that particular item and where you marked it?

A. Yes sir, I did.

Q. And how did you mark that item, sir, and what is it?

A. Commonwealth's Exhibit No. 16 is a cartridge case from a 7.65 millimeter Mauser cartridge. It's marked with the autographic initials WJ and it has an X2. These are found inside the bottom of the cartridge case proper.

Q. I would like you to examine Commonwealth's Exhibit No. 13B, sir, and ask you whether you marked that envelope?

A. Yes sir, I did.

Q. And how did you mark that envelope?

A. I have Q3WJ written on the outside of the page 1696 } envelope.

Q. Will you please open that envelope and examine the contents, sir, and tell us whether or not you studied that?

A. Yes sir, I have.

Q. And did you mark that item?

A. Yes sir, I did.

Q. What is that, sir?

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A. I have Q2WJ scratched on the inside of the piece of bullet jacket.

Q. And that is a piece of bullet jacket?

A. It's actually two pieces.

Q. Two pieces?

A. Yes.

The second smaller fragment was broken off as I was attempting to scrape out some portion of cartridge case that I could make my microscopic examination from.

Q. When you received it, it was one piece?

A. Yes sir.

Q. When you examined it, it was two pieces?

A. Yes sir.

Q. I'd like to have you examine Commonwealth's Exhibit No. 13A and—

The Court: (Interposing) Was that 13B?

Mr. Hassan: It was 13B, Your Honor.

page 1697 } By Mr. Hassan:

Q. Did you mark that envelope, sir?

A. Yes sir, I did.

Q. And how did you mark that envelope?

A. I have Q1WJ on the outside of the envelope.

Q. And what is in that envelope?

A. In the envelope is a cartridge case of the type used in the 7.65 millimeter Mauser ammunition.

Q. And did you mark that, sir?

A. Yes sir, I did.

Q. And did you study that, sir?

A. Yes sir, I did.

Q. Now, I would like to have you look at Commonwealth's Exhibit No. 20 for identification and ask you, sir, whether or not you marked that, sir?

A. I had marked the envelope Q2WJ and marked each of the containers which were with this envelope with Q2WJ.

Q. And did you examine the contents of those containers?

A. I made no laboratory examination. I examined the contents to see if there was material in it at the time I received these items but I made no laboratory examination.

Q. No study was made of those in there?

Mr. Harrigan: Which item is this?

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page 1698 } Mr. Hassan: Two pill boxes, Commonwealth's
Exhibit No. 20 for identification.

That is the one that was mistaken as the tar and I thought
it was something else.

By Mr. Hassan:

Q. Would you examine that envelope, sir, and tell me
whether or not you marked it?

A. I have marked this envelope, yes sir.

Q. And what marking did you place on that, sir?

A. I placed Q16 through Q22, WJ, on this envelope.

The Court: Is that 15 or 50?

The Witness: 50.

By Mr. Hassan:

Q. Would you open that, sir, and examine its contents and
tell me whether or not you marked those or studied those?

A. Yes sir, I did.

Q. And did you mark all the items?

A. No sir, I didn't.

Q. Which items did you mark, sir?

A. I marked the item of evidence I have listed as specimen
Q21 and it has another designation as No. 6.

Q. And does it have an A, B and C?

A. I'm sorry. Commonwealth's Exhibit No.
page 1699 } 50-G. There are two specimens in the pill boxes

I have marked as Q20WJ. It's Commonwealth's
No. 50F where I have the larger pieces marked Q20 and
there's another smaller piece I have marked here as Q20 and
those are the only fragments that I felt were large enough for
me to mark. The other items, Commonwealth's No 50B, 50A,
50C, 50D and 50E, contained very small fragments of metal
I could not put marks on.

Q. Did you save those in connection with your study of
this particular case?

A. Yes sir, I did.

Q. Will you put those in that envelope, sir?

I now show you Commonwealth's Exhibit 41, sir, and ask
you whether or not you marked that envelope?

A. Yes sir, I have.

Q. And what did you mark that with, sir?

A. I have Q23WJ on the outside of this envelope.

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Q. And would you open that, sir, and tell us whether or not you marked that or if you studied that in connection with your study of this case?

A. Yes sir. I marked this specimen, Commonwealth's Exhibit No. 41 as Q23WJ and I did make an examination.

Q. What is that specimen, sir?

A. Commonwealth's Exhibit 41 is a major por-
page 1700 } tion of a bullet jacket.

Q. Now, I show you Commonwealth's Exhibit No. 48 and ask you to examine that envelope, sir, and tell me whether or not you marked that?

A. Yes sir, I have.

Q. And what is your mark on that, sir?

A. I have Q33 through Q39WJ through Commonwealth's Exhibit No. 41.

Q. Will you please open that and examine it, sir?

A. I have examined these items before, yes sir.

Q. And did you mark them when you examined them, sir?

A. Yes sir, I did.

Q. How did you mark them?

A. Commonwealth's Exhibit 48C is marked with a Q36WJ.

Q. That is on the fragment, sir?

A. Yes it is.

Commonwealth's Exhibit 48B is marked with Q37WJ and Commonwealth's 48C and Commonwealth's Exhibit No. 48D is marked with a Q38WJ. Commonwealth's No. 48E is marked with Q33WJ and 48F is Q34WJ and Commonwealth's 48A is marked with a W35WJ.

Q. Now directing your attention, sir, to Commonwealth's Exhibit No. 48, I ask you, sir, to—wait a minute.
page 1701 } I'm sorry. Will you put those back in the envelope?

Now, will you please examine Commonwealth's No. 50 and tell me, sir, whether or not you examined that?

The Court: He's already testified to that.

Mr. Hassan: I'm sorry. I hope I'm not missing anything.

By Mr. Hassan:

Q. I show you, sir, Commonwealth's Exhibit No. 44A, it being a gun and 44B being this envelope which was in a sealed container when it was opened by you here in the Court Room and ask you, sir, if you examined them?

Warren G. Johnson

A. Yes sir, I did.

Q. And what are they, sir?

A. Specimens—Commonwealth's 44A is a 7.65 millimeter Mauser military pistol, Serial No. 9811; Commonwealth's Exhibit 44B are five 7.65 Mauser cartridges that I removed from the pistol, Commonwealth's Exhibit 44A at the time I received this weapon in the laboratory.

Q. And did you place them in that envelope?

A. Yes sir, I did.

Q. And did you mark that with an identification mark?

A. Each one of the cartridges in this container are marked with K1WJ and they are marked No. 1 through page 1702 } No. 5 and the one from the chamber of the weapon is No. 1 and the one immediately below in the magazine is No. 1, 2, 3, 4, and 5.

Q. Did you mark the gun?

A. Yes I did.

Q. And how did you mark that?

A. The initials WJ and K1 inside the trigger guard of this weapon.

Q. Now, sir, the examination and study that you made of these items, would you please describe that to the Court and to the Jury—by the way, are there any other items that I have not shown you that you studied in connection with your ballistics study?

A. No sir.

Q. Please tell us what your examination consisted of?

A. I first examined the portion of the bullet jacket which has been marked as Commonwealth's Exhibit No. 16 for the purpose of determining the manufacture of the bullet represented by this bullet jacket, the type of weapon that it had been fired from and whether or not there was sufficient marks on the side of this mutilated bullet jacket to identify the specific weapon from which it was fired.

I examined two cartridge cases which have been listed as Commonwealth's Exhibit No. 13A—is there a page 1703 } 13B?

Q. 13B was here, sir. 13B was the fragment that was broken.

A. May I retract that?

Q. Yes sir.

A. The cartridge case I referred to, or the bullet jacket, is actually Commonwealth's Exhibit 13B. I examined this

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then for the purpose of determining the type of weapon it was fired from, its manufacturer, and whether or not there were sufficient marks to identify the specific weapon from which it was fired.

I examined two cartridge cases which have been marked Commonwealth's No. 16 and No. 13A for the purpose of determining whether or not they were of the type that could have formerly held a bullet like that represented by the bullet jacket, Commonwealth's Exhibit No. 13B. Also, to determine whether or not there were sufficient marks on this cartridge case or these cartridge cases to identify the specific weapon from which it was fired or they were fired.

I examined the three metal fragments which have been marked as Commonwealth's Exhibit No. 3A, B, and C. Commonwealth's 3A, B, and C are small lead fragments. Commonwealth's 3A is a larger lead fragment.

I then at a later date received the automatic
page 1704 } pistol which has been marked as Commonwealth's Exhibit No. 44A. I fired and examined this weapon to determine whether or not it was capable of being fired or whether or not I could determine whether or not it could be fired since it was last cleaned and whether or not it was capable of firing cartridge cases like those represented by Commonwealth's Exhibit No. 16 and 13A and a bullet such as that represented by Commonwealth's No. 13B.

I then test fired this weapon using ammunition like that of Commonwealth's Exhibit 13A, B, and C. I fired two tests under this bullet and placed two tests under what is known as microscopes. Actually two microscopes with the same slug so as you look down through the left instrument you see under the left side what is under the right microscope. I made an examination of these two tests I had fired to see whether these two tests would show it had been fired from the same weapon. I looked at this bullet scratch marks. There are scratch marks going the length of the test bullets and I was able then to identify the two tests that I had fired as having been fired from the same weapon.

I then replaced one of the test bullets with the fragment of cartridge case or portion of the cartridge case, listed as
page 1705 } Commonwealth's 13B, and made the same test, side by side comparison of these same scratch marks. Having completed this examination, I took the two cartridge cases I had fired from the weapon,

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Commonwealth's 44A, and placed them under the microscope and made the same type of comparison of the tiny marks placed on these tests by a weapon in which they were fired. Having satisfied myself that I could identify these two tests as having been fired in the same weapon, I then replaced one of the tests with the cartridge case which has been listed as Commonwealth's Exhibit No. 13A and made a microscopic comparison of these marks. I completed that examination and then made a comparison of the marks appearing on Commonwealth's Exhibit No. 16. At some time subsequent to that examination, I examined the bullets and cartridge cases which have been listed as Commonwealth's Exhibits No. 48A, B, C, D, E, F, and G. I got up to the same type of examination of these cartridge cases and bullets to determine whether or not the bullets—there are four bullets represented which have been listed as Commonwealth's Exhibits No. 48C, 48B, 48D, and 48G and they were determined to be bullets—the Commonwealth Exhibits No. 48A, 48F and 48E were cartridge cases. I examined the cartridge cases to determine whether or not the 3 had been fired in the same weapon. Having satisfied myself that the three cartridge cases had
page 1706 } all been fired in the same weapon, I then placed one of these test cartridge cases under the comparison microscope and again made a side by side comparison of these cartridge cases I had fired in the automatic pistol, Commonwealth's Exhibit No. 44A. Having completed that examination, I placed one of the test bullets I had fired from the pistol, Commonwealth's Exhibit 44A, and made a microscopic comparison of the bullet scratches I found on Commonwealth's Exhibits 48G, 48D, 48B, and 48C. I also received another fragment, a bullet jacket which has been marked for identification as Commonwealth's Exhibit No. 41. I examined this bullet jacket to determine its manufacturer, whether it was of the same type as that represented by the bullet jacket, Commonwealth's Exhibit No. 13B, and whether or not it was of the type that could have been fired from a weapon such as Commonwealth's Exhibit No. 44A and I again made this microscopic comparison of the tiny scratch marks appearing on this specimen.

I examined the lead fragments or the metal fragments which are found in Commonwealth's Exhibit No. 50A, B, C, D, E, and F to determine whether or not I could identify the source of these particular items. Most of the items were small fragments of metal.

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I also compared the five cartridges found in page 1707 } the weapon, Commonwealth's Exhibit No. 44A, with the bullets and cartridge cases represented by Commonwealth's Exhibit 16, 13 and 41, 48A, B, C, D, E, F, and G, and the items of evidence that are listed in Commonwealth's Exhibit 48.

Q. Now, did you, sir, as a result of your studies and examination arrive at an opinion?

A. Yes sir, I did.

Q. What is that opinion?

A. In my opinion the portion of bullet jacket which has been marked as Commonwealth's Exhibit No. 13A, a portion of bullet jacket which has been marked as Commonwealth's Exhibit No. 41, the four bullets that have been marked as Commonwealth's Exhibits No. 48C, 48B, 48D, and 48G were fired from the automatic pistol which has been marked as Commonwealth's Exhibit No. 44A to the exclusion of all other weapons.

The two cartridge cases marked as Commonwealth's Exhibit No. 16 and Commonwealth's Exhibit No. 13A, the three cartridge cases Commonwealth's Exhibit No. 48A, 48F, and 48E were fired in the automatic pistol, Commonwealth's Exhibit No. 44A to the exclusion of all other weapons.

The portion of bullet jacket or,—correction—the portion of bullet core which has been mared as Commonwealth's Exhibit No. 3A is the base portion of the lead core of a bullet like that that would be represented by the bullet jacket, Commonwealth's Exhibit No. 13B and Commonwealth's Exhibit No. 41.

Q. Now, when you made this examination, what did you do with all of this evidence, sir, after you completed your examination?

A. I packaged all of these items up as I completed the examination and placed them in my evidence locker in the laboratory.

Q. And did there come a time when they were returned to the Arlington County Police Department?

A. Yes sir.

Q. Now, did you make any other examinations besides ballistics examination?

A. I made an examination of a coat, a reversible raincoat type of coat, and a towel.

Q. I would like to show you Commonwealth's Exhibit No.—maybe I better get those to one side first.

Warren G. Johnson

Juror: Your Honor, I wonder if I understand that the weapon was described as a 7.65.

I believe it's a .63.

The Witness: That's correct. It's a 7.63 Mauser.

page 1709 } By Mr. Hassan:

Q. Now, I would show you Commonwealth's Exhibit No. 43 for identification. I believe this one is 42 (referring to the hat) and I'll ask you sir if those are items to which you refer.

A. The coat, Commonwealth's Exhibit No. 43 for identification, is the coat to which I referred.

Q. Will you examine the hat and the towel; they are one to which you referred?

A. The towel, Commonwealth's Exhibit No. 8A for identification, is the one to which I referred.

Q. Did you mark that at the time you examined it, sir?

A. I marked the container in which I received it. I don't see a mark that I can readily identify as mine on the towel proper. My mark was placed on the container which I received it in.

Q. Is that container the brown bag inside the plastic bag?

A. Yes sir.

Q. Will you take that out and see if that is your mark?

A. Yes sir, that's my mark.

Q. And was that towel completely wrapped in that container?

page 1710 } A. I believe it was in the plastic bag at the time I received it and I wrapped it in the paper bag so that I could keep the items of evidence separate after it was submitted to me.

Q. Now, did you mark the coat, sir?

A. Yes sir, I did.

Q. And how did you mark that?

A. I have my autographic initials in the collar band of the coat, WJ.

Q. And will you examine the cap, sir.

Now, what was the nature of the examination of these items that you made, sir?

A. I examined these items for the purpose of determining whether or not I could associate these items with the discharge of a firearm. That would be something on the order of determining whether or not I could identify bullet holes through those garments or could find powder burnings, burn-

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ings or actually scorchings or residue on these garments. This was the reason for my examination.

Q. What was the result of those examinations?

A. I found nothing associated with 8A, 43 or 42 which would connect them with the discharge of a firearm.

Q. When you finished your examination of page 1711 } those items, what did you do with them?

A. The item, the coat, which has been marked Commonwealth's No. 43 and the hat, Commonwealth's No. 42, were turned over to special agent, Morris Clark of our laboratory by me.

Q. Now, sir, did you make any other examinations?

A. Not to my recollection, no sir.

Q. Now, did there come a time in your presence, sir, when there was any other examination made of the gun?

A. Yes sir.

Q. What examination was that, sir?

A. At the time I received the weapon, it was examined for fingerprints.

Q. Who made that examination, sir?

A. The fingerprint examiner, John Walker.

Q. And were you present?

A. Yes sir, I was.

Q. Now, will you describe the condition of the gun when you first received it and what you did with it?

A. At the time I received the gun, it was in a plastic container and the interior portion of the gun was full of water. There was a great deal debris in the barrel and the mechanism. I unloaded the weapon. I disassembled the page 1712 } weapon, and dried the water from the interior part with an air hose and I then handed these individual items to the fingerprint examiner, Walker, whereupon, he conducted a fingerprint examination of these items.

Mr. Hassan: I have no further questions of this witness as this time.

The Court: Mr. Harrigan?

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, Mr. Johnson, the items that you have testified

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about are they all the items that you examined in connection with this case?

A. No sir.

Q. Did you examine any other bullet casings?

A. Yes sir.

Q. Now—

The Court: (Interposing) Was that marked?

Mr. Harrigan: "D" for defendant.

By Mr. Harrigan:

Q. Now, I show you Defendant's Exhibit No. D which is still sealed. Can you identify that?

Mr. Hassan: Defendant's Exhibit No. what?

Mr. Harrigan: "D".

page 1713 } Mr. Hassan: "D".

By Mr. Harrigan:

Q. Can you identify that?

A. This container has Q24WJ that I placed on it.

Q. Do you know what's in that container?

A. No sir.

Q. Did you seal it?

A. I sealed it when it left the laboratory.

Q. Has that seal been removed to your knowledge?

A. I don't know. I haven't had it in my custody from the time it left the laboratory.

Q. Will you open it up?

What does it contain?

A. Defendant's Exhibit D contains a cartridge case.

Q. Do you have your initials on it anywhere?

A. Yes sir, I do.

Q. Where?

A. Inside the mound.

Q. Now, who gave you that cartridge case?

A. This was delivered to me in the laboratory by Officer Wismer.

Q. And the jacket on there, where does that purport to be from?

page 1714 } A. It has no marks by which I could identify it.

Q. Does it have an address?

A. Yes.

Warren G. Johnson

Q. Where was it?

A. 2522 Lee Highway, Arlington, Virginia.

Q. All right.

Now, did you examine that particular cartridge case?

A. Yes sir, I did.

Q. And was that cartridge case fired from a 7.63?

A. The cartridge case is a 9 millimeter cartridge case and could not have been fired in a 7.63 millimeter pistol.

Q. So that casing definitely was not fired from that gun?

A. That's correct.

Q. All right.

A. You're speaking now of Commonwealth's Exhibit No. 44A?

Q. That's right.

Mr. Harrigan: I would like to offer that into evidence, Your Honor, as the jacket taken from the defendant's home, a shell casing taken from the defendant's home.

Mr. Hassan: We stipulated it was an illegal page 1715 } search and it was suppressed and there was no fight over it. Commonwealth has not objected otherwise we will object. I don't think he can have his cake and eat it too. He comes in and presents a Motion to have the evidence suppressed and then he starts trying to get it into evidence.

The Court: Has there been any testimony in the case that's where it came from?

Mr. Harrigan: No sir.

Mr. Hassan: There was one bit of cross examination that went into that search.

The Court: There was a bit of cross examination on it. I don't recall this specific case being testified to.

If you gentlemen will stipulate that's where it came from, it will be received in evidence.

Your stipulation then is that it's a casing that was—

Mr. Harrigan: (Interposing and continuing) Illegally received from the defendant's home.

Mr. Hassan: No. That's not my statement.

Mr. Harrigan: He said he stipulated it was illegally received from Patler's home.

The Court: I wouldn't let him characterize it that way. It was seized at 2522 Lee Highway and it turned out to be a 9 millimeter casing which could not have been fired page 1716 } from Commonwealth's Exhibit 44A.

Warren G. Johnson

Is that the substance of the stipulation?

Mr. Hassan: Yes.

Mr. Harrigan: Yes.

The Court: All right.

Let the record so reflect that it will be received as Defendant's Exhibit D.

May I have the envelope?

Mr. Harrigan: All right.

(Whereupon, Defendant's Exhibit No. D was entered into evidence.)

By Mr. Harrigan:

Q. Now, I show you Commonwealth's Exhibit 8A for identification and you say you conducted an examination of that particular towel, is that right?

A. I made an examination of the towel, yes sir.

Q. Fine.

What type of examination did you make?

A. I looked at the towel visually and then I examined it microscopically.

Q. What were you looking for when you examined it microscopically?

page 1717 } A. Gun powder particles.

Q. And did you find any gun powder particles on it at all?

A. No sir.

Q. Did you also examine it for any oil from any gun or from a gun?

A. No sir.

Q. Now, did you find anything on that towel which would indicate it had been near the gun that was introduced into evidence here?

A. I found nothing to associate this towel with any firearm.

Q. Now, you said you examined the raincoat, which is Commonwealth's Exhibit 43, and the hat, which is Commonwealth's 42; what did you examine those for?

A. Again, for any association with the discharge of a firearm.

Q. Now, would that be looking for powder burns or powder stains of some sort?

A. It would be looking for gun powder residues, smoke singeing or bullet holes.

Warren G. Johnson

Q. Did you find any bullet holes?

A. No sir.

page 1718 } Q. Did you find any powder or residue?

A. No sir.

Q. And how did you examine that, with the same microscope?

A. Yes sir.

Q. Now, the last time you testified concerning this bullet casing, your first statement was to the effect that it was fired from a 7.63.

A. I don't recall now.

Q. Now the last time you were asked:

"Question: Did you examine any cartridge cases that were not fired from that gun? Where you came to the conclusion that they were fired from that gun?"

"Answer: I examine cartridge cases every day. Are you speaking in connection with this case?"

"Question: In connection with this case."

"Answer: No sir."

Do you recall that?

page 1719 } A. I recall being questioned along that line.
I don't recall my specific answers to any questions or any of those specific questions that were posed.

Q. Now you stated that when you test fired this weapon, it was twice wasn't it, is that right?

A. Yes sir. Actually it was four.

Q. Four times?

A. Yes sir.

Q. All at the same time?

A. No sir.

Q. When was the fourth time? Was it two times and then two times again?

A. Two more, yes sir.

Q. And you first compared the two bullets that you test fired that you knew had been fired from this gun?

A. Yes sir.

Q. And this microscope that you have, are these bullets set in there so you can revolve the bullets?

A. Yes sir. You can revolve them in all directions by moving them back and forth.

Warren G. Johnson

Q. All right.

Now, on these jackets you had that were torn up, did you revolve those or did you just revolve one bullet to see if you could match up those lines?

page 1720 } A. Identification is made as to the entire circumference of the bullet. It's not in any one impression. I moved them around comparing point for point on the evidence itself.

Q. Did you find any difference in any of the bullets in the lines around the side which were not on the other bullets?

A. You will always find differences.

Q. How many differences did you find in these bullets?

A. I don't know.

Q. You didn't count them?

A. No sir.

Q. Now, how many similarities do you have to come up with before you can say with any degree of certainty that it's the same bullet?

A. There is no set number. It's a preponderance of evidence.

Q. I see. So I noticed you've kept saying "having satisfied myself that they compared." Is it standard that if it satisfies you—

A. (Interposing) That's the general consensus of expert testimony, yes sir.

Q. I see.

Then would it be safe to assume that your page 1721 } standard may not satisfy some other expert?

A. Two experts with the same amount of training and experience will arrive at the same conclusion.

Q. Every single time?

A. I haven't talked to every single expert but this is the general statement.

Q. Now, one Juror did ask about a 7.65. I believe that's what you said by error, is that right?

A. I don't recall saying 7.65. If I did, it was in error.

Q. It was a 7.63?

A. It was a 7.63. It was the caliber designation of the automatic pistol, Commonwealth's Exhibit 44A.

Mr. Harrigan: Thank you. I think that's all.

Warren G. Johnson

REDIRECT EXAMINATION

By Mr. Hassan:

Q. What is the degree of certainty of your opinion as expressed here?

A. My opinion is unqualified. In my opinion the bullets and cartridge cases that I have previously described were fired from that weapon to the exclusion of all others.

Mr. Hassan: No further questions.

The Court: Mr. Johnson, there has been testimony in this case that the fragments identified as 3A, B and 3C of the Commonwealth, penetrated an automobile windshield then went into the body of the victim and were removed from the body. Would the penetration of the glass and any distortion of the fragments caused thereby leave sufficient indication for you to be able to come to a conclusion as to those fragments?

The Witness: The three fragments, Commonwealth's Exhibits 3A, B, and C, two of them are small lead fragments. There is one larger fragment that is the base portion of the lead core from a jacketless bullet. The lead itself has a white powdery substance adhering to it and it has a number of marks in the lead which lead me to the conclusion that this particular bullet or the bullet represented by this core or piece of core had struck a glass object and was probably the cause of the split up of the sides. The jacket is separate. The jacket of the bullet is copper-nickel and lead material and has a lead core inside.

In this particular case there were two bullet jackets that had split open and the lead core had pulled itself out of the jacket proper.

Now, the larger piece of lead in Commonwealth's Exhibit 3A, B, or C in my opinion bore marks produced by this lead core striking glass.

page 1723 } The Court: Well, my question really was directed toward the jacket, the fragment of the jacket which passed through the glass and then were found in the body.

Were you able to see microscopic marks on those distorted fragments that had passed through the glass with enough clarity to arrive at an opinion as to the gun from which they were fired?

Warren G. Johnson

The Witness: My testimony was that the bullet jacket fragments which was not 3A, B, or C—

Mr. Hassan: That was 13B.

The Witness: 13B. This was the jacket that was identified as having been fired from the automatic pistol.

The Court: I see.

3A, B, and C were lead fragments, were they?

Mr. Hassan: They were from the autopsy. 13A and B were marked then.

The Court: 13B then would have been a part of the bullet which was found in the chest and somewhat in the T-shirt of the victim.

Mr. Hassan: By the medical examiner at the scene.

The Court: All right, sir.

Let me amend my inquiry to that then.

Were there enough microscopic indicia left on
page 1724 } that to make a determination as to the gun from
which it had been fired?

The Witness: Yes sir.

Mr. Hassan: Talking about the fragments, aren't you?

The Court: No. I'm talking about the jacket, the piece of jacket.

FURTHER EXAMINATION BY MR. HASSAN

By Mr. Hassan:

Q. Now, you did examine, did you not, seven fragments removed from the vehicle?

A. There were seven containers. I actually examined twelve individual lead fragments that were recovered in this case.

Q. Were any of them of sufficient significance for you to make a determination as to whether or not they came from this weapon?

A. There were no marks to indicate on any of these lead fragments recovered to indicate the exact type or weapon from which they were fired. They all appeared to be portions of the core of a jacketed bullet.

The Court: Any further questions, gentlemen?

Mr. Harrigan: No further questions.

Mr. Hassan: He may be excused.

page 1725 } The Court: Thank you, Mr. Johnson. You're
excused.

John Walker

Whereupon, JOHN WALKER, was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. My name is John Walker. My business address is 2nd and D Streets, Southwest, Washington, D. C.

Q. By whom are you employed, sir?

A. I'm employed by the Federal Bureau of Investigation.

Q. What are your duties with the Federal Bureau of Investigation?

A. My duties include the processing of arms in an effort to determine latent prints and to compare latent prints with fingerprints to aid in the instruction of special agents and police officers in fingerprint matters, to aid in the identity of disaster victims by examining skin tissues and fingerprints and report the result of my find, and testifying when asked to do so.

Q. What is your education, sir?

page 1726 } A. I've had a high school education and some college.

Q. And what has been your training in your field, sir?

A. My training in fingerprint work has been more on the job training and experience and observation.

Q. And how long has this been going on, sir?

A. I have almost twenty-four years experience in fingerprint work.

Q. And during that period of time, sir, have you testified in any Court?

A. I have.

Q. In what Courts, sir?

A. State, Federal, local, municipal.

Q. And how many times have you testified, if you know sir?

A. I would say approximately one hundred times.

Q. Now, did there come a time when you saw Commonwealth's Exhibit 44A and 44B in this case, sir?

A. I can't recall specifically seeing the Exhibit No. 44A. The material in Commonwealth's Exhibit No. 44B I cannot identify specifically.

John Walker

Q. Now, sir, did you make an examination of 44A?

A. I believe I did.

Q. And when did you do that, sir?

page 1727 } A. In the F.B.I. laboratory.

Q. Was anyone present at that time, sir?

A. There was.

Q. Who was that, sir?

A. Special agent, Warren Johnson.

Q. What was the condition of that weapon, sir, when you first saw it?

A. Condition? In what way?

Mr. Harrigan: He only said he saw it.

The Court: He said he examined it.

Mr. Hassan: What?

The Court: Did you get the question, sir?

The Witness: It was wet and had some dirt or foreign material on it.

By Mr. Hassan:

Q. Was there an effort to dry it before you examined it?

A. Yes sir, in some respects. Although I did examine it visually before attempting any drying process.

Q. Would you describe to us the nature of your examination?

A. Special agent Johnson disassembled the gun in my presence and I examined each part of the gun visually to determine if there were any latent prints visible and after the visual examination, I used a gray colored fingerprint powder and brush across the surface in an effort to develop latent prints.

Q. Did you do anything else to the gun, sir?

A. No sir, I did not.

Q. Did there come a time when you found any latent prints?

A. No sir.

Q. Did you thoroughly examine the entire gun?

A. I did.

Q. Now, at this time did you examine any bullets?

A. Yes sir. At that particular time, I also processed with the gray colored powder, five cartridges.

Q. Did you find any prints?

A. I did not.

Curtis E. Thompson

Q. Did you mark those cartridges in any way?

A. I did not.

Mr. Hassan: I have no further questions of this witness,
Your Honor.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Isn't it customary to mark evidence if you
page 1729 } examine it so you can testify about it later?

A. No sir, not the procedure I use, it's not.

Q. In other words, if you don't find anything, you don't
mark it?

A. No sir, we do not.

Q. If you find something, you then mark it?

A. No sir. I have the latent prints photographed if I
develop any but putting marks on the item itself, I do not.

Mr. Harrigan: No further questions.

The Court: May the witness be excused?

Mr. Hassan: He may be excused.

Curtis F. Thompson.

Whereupon, CURTIS E. THOMPSON, was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. Curtis E. Thompson, 5118 North 15th Street, Arlington.

Q. What is your occupation?

A. I'm a special agent of the Federal Bureau
page 1730 } of Investigation.

Q. What is your field of duty in the F.B.I.,
sir?

A. I'm assigned to the F.B.I. laboratory in Washington.

Q. Are you a specialist, sir?

A. Yes. I specialize in shoes, tires and evidence of that
nature.

Q. Now, sir, what is your education?

Curtis E. Thompson

A. I have a B. A. degree from Concordia College, Moorhead, Minnesota and I attended the George Washington Law School in Washington, D. C.

Q. Have you any special training in your field, sir?

A. Well, I think the training could best be described as apprenticeship training, my work was right in the F.B.I. laboratory.

Q. How long have you been in the laboratory of the F.B.I., sir?

A. I've been there over twenty years except two years in the World War II when I served in the Navy.

Q. Now, did there come a time when you had an opportunity to examine any evidence in this case?

A. Yes.

Q. May I show you Commonwealth's Exhibit No. 21, sir, and ask you whether or not you conducted an examination on that evidence?

A. Yes, I have examined each of these items.

Q. And I show you Commonwealth's Exhibit No. 8E and ask you, sir, whether or not you have examined these exhibits?

A. Yes I have.

Q. Now, sir, what was the nature of the examination and study that you gave to these items?

A. The purpose of the examination was to determine whether or not the soles on the shoes of the Exhibit 8E could have been produced by the shoe lift that appeared in the other exhibit. I've forgotten the exhibit number, the other exhibits I hold in my hand.

Q. That's Exhibit 21?

A. Yes sir. That was the purpose of my examination.

Q. And what was the nature of the study that you made?

A. Well, to describe briefly the study, I tried to determine whether the soles of these shoes which are what I call crepe type soles, crepe rubber soles, because of the nature of their characteristics or design, could have produced the impressions which appear on the lifts which are lifts of shoe prints that were submitted to me and in making this comparison I observed the nature and design of the prints, page 1732 } the partial prints. They're fragmentary in the lift, and also in Exhibit 8E.

Q. Would you describe what your study shows in connection with the lifted prints in regards to design or in regards to manufacture?

Curtis E. Thompson

A. Yes. I found that among the lifted prints there were two different styles of lifted prints, there were two different styles of design. One design was small or knobby design or a screen design, depending on how you look at it. A series of small squares which could look like a screen or a series of small knobs and that's a type of design found on many different makes of rubber and overshoes particularly. I did find another design, too, that was comparable to a Goodrich gym shoe design. They were on the fragmentary list that appears as Exhibit 21.

Q. Did there come a time as a result of your study and examination that you indicated that you came to a conclusion or an opinion as to whether or not any of the lifts were placed by Commonwealth's Exhibit 8E.

A. Yes there did.

Q. And what was that opinion, sir?

A. My opinion is that the lifts in Exhibit 21, the shoe print lift could not have been left by the impressions page 1733 } made by these particular shoes.

Q. Did you make any other study of those shoes besides the print study?

A. Not that I recall, no sir.

Q. Did you make any other study or examination in connection with this particular case?

A. Not involving evidence of this type, no.

Mr. Hassan: Thank you, sir. I have no further questions.

The Court: Mr. Harrigan?

Mr. Harrigan: It seems pretty complete to me. No questions.

The Court: May the witness be excused?

Mr. Hassan: He may be excused.

The Court: Let's have a five minute recess.

(Whereupon, a short recess was taken.)

The Court: I wonder if there's any possibility of any of this other evidence that's going to be negative such as the fingerprint evidence, would it be possible to stipulate rather than go through the proof.

Mr. Hassan: I would say if you do this, you're going to foul it up and we'll have to quit early because I'm not ready to proceed beyond the four witnesses and two of

Thomas L. Hughes

page 1734 } whom are soil samples which are entirely negative. I do however—I would not hesitate to stipulate to this. I would prefer to put it on rapidly as possible. This is my first witness to be used and the next witness I have is the tar man who studied the samples and the clothes and the tar samples and paint and I would prefer to put him on. He has colored photographs of the shoes as they were when he received them.

The Court: All right. If you prefer to put him on. I just thought we might save some time.

Mr. Hassan: Then I have this fellow, Stuart, who went hunting instead of coming here to trial and there's a couple of pictures that I think are in but he hasn't testified to.

Mrs. Lane: Anything we can stipulate to would also be shown on the record.

Mr. Morris: I don't think we—

Mr. Hassan: (Interposing) Well, what you think of as negative is what I think of as negative. They're less than positive. I think they're probably the soil samples which are less than nothing but I think the tar man and the fiber man who will be here tomorrow morning should not be stipulated to. The Jury should hear it.

The Court: Well, I just hate to consume any page 1735 } more time for trial than is necessary.

Well, if you don't think you can accomplish anything by stipulation—

Mr. Hassan: I'll make it just as brief as possible. The first man isn't going to say anything. I'm sure there will be a lot of cross examination on the tar man.

The Court: All right.

Call the Jury.

Mr. Hassan: Mr. Hughes, please.

Whereupon, THOMAS L. HUGHES, was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. Thomas L. Hughes, a special agent with the Federal Bureau of Investigation.

Thomas L. Hughes

Q. And what are your duties at the F.B.I., sir?

A. I'm assigned to the F.B.I. laboratory in Washington, D. C.

Q. I would like to show you, sir, Commonwealth's Exhibit for identification No. 51K, sir, and ask you whether or not your signature appears thereon?

A. Yes sir, it does.

Q. And what was the occasion for your placing your signature on there, sir?

A. I returned some items of soil and roofing material to Officer Wismer which he had supplied to me.

Q. Which he had supplied to you?

A. Yes sir.

Q. And was that some seventeen oyster cartons?

A. Yes, I believe it was.

Q. Now, I'd like to show you Commonwealth's Exhibits 22 through 40 which includes this box, sir. I think 40 is the box. I will ask you to examine those, sir, and tell us whether or not you had previously examined them?

A. Yes sir, I have.

Q. And are those the items on Commonwealth's Exhibit 51K which you signed for?

A. Yes sir, they are.

Q. What is the nature of the work that you do in the F.B.I.?

A. I'm assigned to the soil and minerals unit in the laboratory. In this unit we make examinations of material of a mineral nature. This includes soil, building material, safe insulations, about anything of a mineral nature.

Q. What is the nature of your educational background and your special training for this type of work, sir?

A. I received a Bachelor of Science degree from the University of Oklahoma in geology and also approximately two years of graduate study in geology at the University of Oklahoma. After being assigned to the laboratory I received approximately one year of training in my field.

Q. And how long have you been assigned to the laboratory, sir?

A. It would be approximately four years.

Q. And have you testified in Court as an expert, sir?

A. Yes sir, I have several times.

Q. What Courts, sir?

Thomas L. Hughes

A. I have testified in Courts in Virginia, Mississippi, in Federal Courts, Florida, New Mexico, California, Arkansas, Maine, several other states.

Q. How many times this week?

A. This is the first time this week.

Q. How many cases have you been on standby for this week?

A. This one.

page 1738 } Q. Now, sir, will you tell me how many times
you've testified as an expert?

A. I would say approximately fifty to sixty times, somewhere in that area.

Q. Did there come a time when you made a study in your laboratory of the items contained in that box, Commonwealth's 22 through 40?

A. Yes sir.

Q. And did there come a time when you made a study of any other items in connection with this matter?

A. Yes sir. I made an examination of some soil small smears and deposits of soil which I removed from a pair of shoes.

Q. I'd like to show you Commonwealth's Exhibit No. 8E and ask you, sir, whether these are the items to which you refer?

A. Yes sir.

Q. And was there anything else that you examined, sir, in connection with this case?

A. No sir, there was not.

Q. Now, will you tell us the nature of your study and examination?

A. Yes sir. I examined the shoes for the im-
page 1739 } pressions of soil and found a small deposit of
soil on the soles of the shoes which I compared
with the soils which were submitted to me by Officer Wismer.

Q. How did you make this comparison, sir?

A. In this case, primarily, a microscopic comparison.

Q. And as a result of your study and examination, did you come to any conclusion or an opinion?

A. Yes sir. I came to the conclusion that the soil found on the shoes which I removed from the shoes did not come from any of the sources represented by the soil of the exhibits—I'm sorry I don't know the numbers.

Q. 22 through 40.

A. State's Exhibits 22 through 40.

William R. Hidelman

Q. Did you make any other studies or investigations in connection with this case?

A. No sir. I did not.

Mr. Hassan: I have no further questions of this witness, Your Honor.

The Court: Mr. Harrigan?

Mr. Harrigan: No questions.

The Court: May the witness be excused?

Mr. Hassan: He may be excused.

The Court: You may be excused.

page 1740 } Whereupon, WILLIAM R. HIDEELMAN, was
called as a witness on behalf of the Common-
wealth, and having been duly sworn, was examined and testi-
fied as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your occupation?

A. William R. Hidelman and I'm employed as a special agent in the Federal Bureau of Investigation and assigned to the laboratory in Washington.

Q. What is the nature of the duties you perform in the laboratory, sir?

A. I'm assigned to the Spectrographic Section of the laboratory. This is a section where we analyze paint, glass, metal, poisons, almost any type of material, especially where the amount available for examination is small. Most of the analyses are carried out by means of scientific instruments.

Q. Now, sir, what is the nature of your education and background for this type of examination?

A. I graduated from Concordia College which is in New York State where I majored in physics and chemistry and I attended the United States Department of
page 1740-A } Agriculture Graduate School taking courses
in chemistry. I've taken special live courses in the identity of residues at Purdue University. I was employed for approximately two years as an analytical chemist for a wire manufacturing company in Harrison, New Jersey.

Q. And how long have you been in the F.B.I. laboratory, sir?

William R. Hidelman

A. Approximately twenty-six years.

Q. And have you had occasion to testify in any Courts?

A. Yes sir. I've testified over two hundred times in many Courts all over the country.

Q. Now, sir, did there come a time when you made a study of certain evidence in this case?

A. Yes sir, I did.

Q. And what was that evidence that you studied, sir?

A. On August 29 of this year I received several articles of clothing from the special agent, a Warren Johnson, of the laboratory. I also received paint samples and I received samples of tar.

Q. Now, sir, I would like to show you Commonwealth's Exhibits 8D, E, B, A, F, and F-1 and ask you sir whether or not these are the clothing to which you refer?

Mr. Harrigan: If Your Honor please, could page 1741 } we approach the bench?

The Court: Yes.

* * * * *

Conf.

11/28/67

page 2 }

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Mr. Harrigan: As I understand the record at this time, none of those items are in evidence, especially the towel, and I understand the towel is not to be in evidence.

There has been testimony that the shoes were put in the same bag with the other clothing and I don't think a proper foundation has been made to show those clothes

Conf. were in the same condition as when Patler was 11/28/67 taking them off, and there may be tar from some page 3 } other source on them.

The Court: I think that's a matter for cross examination. It doesn't seem to go to the admissibility of the testimony.

Now I believe that everything here is in evidence except the towel and the socks. I think the other items are. I think there was a chain of custody on the socks and not on the towel.

William R. Hidelman

As I recall, they are just marked for identification at this point.

Mr. Hassan: The towel and the socks are just for identification at this time.

Mr. Harrigan: Exception.

By Mr. Hassan:

Q. Now, sir, I show you Commonwealth's Exhibit No. 22, sir, and ask you whether or not that is one of the bits of evidence that you examined?

A. Yes sir, it is.

Q. And what is that sir?

A. May I open it?

Q. Yes, you may open it.

A. This is a sample of tar.

Q. And I show you Commonwealth's Exhibit No. 19 and ask you, sir, whether that is one of the bits of evidence you examined?

A. Yes sir, it is.

Q. And what is that, sir?

A. This is a sample of green paint.

Q. And is there anything else in that besides green paint?

A. Yes sir. There's also a sample of white paint.

Q. And did you examine that in your studies of this case?

A. Yes sir, I did.

page 1742 } Q. I'd like to show you Commonwealth's Exhibit No. 20, sir, and ask you whether or not you examined that in your studies in this case?

A. Yes sir. I also examined these two items. They're samples of tar.

Q. Now, is there anything else you examined that the Arlington County Police Department furnished to you?

A. No sir, there isn't.

Q. Now, in connection with your examination in your laboratory, sir, did there come a time when pictures were taken of Commonwealth's Exhibit 8?

A. Yes sir. In examining the pair of shoes, I noted that there were foreign deposits on the bottom and before I removed the deposits to examine them I had photographs taken as they were received.

Q. Do you have those photographs with you, sir?

A. Yes sir, I do.

Q. May I have them, sir?

William R. Hidelman

Mr. Hassan: I'd like to have those marked for identification as Commonwealth's No. 52A, B, C and D.

(Whereupon, Commonwealth's Exhibits No. page 1743 } 52A, B, C, and D were marked for identification.)

By Mr. Hassan:

Q. Now, sir, would you describe what studies you made of these items?

A. I examined the various articles of clothing under a low power binocular microscope looking for the presence of foreign paint deposits and for the presence of tar deposits and on the bottom of the shoes I found a rather substantive deposit of tar. On the rear of the trousers, I also found a small tarlike deposit which was actually too light for analysis or identity. The other items of clothing I did not find any paint or any tar deposits. The tar on the bottom of the shoes was compared with another sample of tar by means of an infra-red spectrophotometer and this particular instrument, technical instrument, told me that the tars were similar in composition. However, the tars did not possess any unusual individual characteristics of which would allow the samples to be specifically associated with one another.

Q. Now, sir, when the clothing and the shoes arrived, how were they packed?

A. I believe they were all packed around in a—as I recall, it was a paper bag.

Q. Would you be able to determine, sir, page 1744 } whether the tar you referred to on the rear of the trousers was independent of or associated with the shoes?

A. No sir. First of all, it was too limited for an adequate analyses and the possibility existed that it could have gotten there from the shoes.

Mr. Hassan: I have no further questions of this witness, Your Honor, other than to offer his photographs in evidence.

The Court: Is there objection to the acceptance of the photographs in evidence?

Mr. Harrigan: I'll ask some questions before the photographs are entered.

William R. Hidelman

CROSS EXAMINATION

By Mr. Harrigan:

Q. Do you know if those shoes looked the same there as they did when they took them off the defendant?

A. I didn't see them when they took them off the defendant.

Mr. Harrigan: I object to them. They have the shoes.

The Court: What time were these shoes turned over to you, sir, if you know?

The Witness: It was on the morning of the 29th of August, first thing in the morning around 9:00 o'clock
page 1745 } I imagine.

The Court: And you made some photographs of them at that time.

By Mr. Harrigan:

Q. Mr. Hidelman, now spectrographic tests many times the question is asked are they similar in composition. The issue is whether they're identical. If I ask you are they identical, what is your answer?

A. It depends on what your definition of identical is. According to the dictionary the definition of identical is one and the same in all respects which includes weight and so forth and size and in this fashion they're not identical in composition. They are similar. That is, they give a similar composition.

Q. And tar is made through a commercial processer and all of it is fairly similar, I guess, isn't it?

A. That's correct. Tar is tar.

Q. Tar is tar. That's all I want to know.

Thank you.

The Court: Mr. Hidelman, does the comparison of the tar from the shoes with the known sample—I gather your testimony is, it's impossible to say with any certainty it came from the same source?

page 1746 } The Witness: That's correct.

Normally, on something like this one of the characteristics of the tar samples would be impurities that it picked up or the foreign materials which become apparent in the tar. In this case, I didn't find anything which was characteristic of both samples. The samples from the roof was

Ewing E. Stuart

relatively clean and pure. The samples from the shoes had pieces of grass and pebbles and miscellaneous debris. But the part that I examined, I more or less tried to purify by dissolving it in chloroform, a dissolvent for asphalt, and as a result of that I didn't find any inherent impurities which were characteristic or which were different.

The Court: All right.

Any further questions, gentlemen?

Mr. Harrigan: No further questions.

Mr. Hassan: He may be excused.

The Court: You are excused. Thank you.

Whereupon, EWING E. STUART, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

page 1747 } By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. Ewing E. Stuart, 6011 Wilson Boulevard, Arlington, Virginia.

Q. Now, sir, directing your attention to on or about the 25th day of August, 1967, did there come a time when something unusual occurred in your neighborhood?

A. Yes sir.

Q. Where were you?

A. I was in the kitchen at that time and the door was open.

Q. Where does the door of your kitchen face?

A. It faces the shopping center.

Q. And what unusual occurred that you observed or heard?

A. Well, between the hours of 11:00 and 12:00 I heard two shots.

Q. And what did you do then, sir?

A. Yes. I immediately looked out the door and saw the barber run out the barbershop door and I started up towards the scene of the accident.

Q. And as you started up, sir, what did you see, if anything?

page 1748 } A. Well, as I started up—well, I have to turn about maybe a forty-five degree angle to keep on the sidewalk up to the shopping center and, of course, my eye

Ewing E. Stuart

was focused on what was going on above and in front of the barbershop and as I turned I saw a man going over the wall.

Q. How was he going over the wall?

A. What do you mean, sir?

Q. Well, what way was he going over the wall?

A. He put his hands up on the wall and lifted his hand up on a trash can that belongs to C. A. Crack and he lifted himself up on to his rump and from there on over the wall.

Q. Did you get an opportunity to see this man?

A. I did not see his face.

Q. What did you see sir?

A. Well, I could give a description of how he was dressed.

Q. Yes sir.

A. He was dressed in dark clothes and had no hat. He had no gun in his hand at the time he went over the wall because I happened to see his hands.

Q. Can you give us anything else about a description?

A. I would say a man about five, eight; five, ten; about one sixty, one seventy, in my judgment.

page 1749 } Q. And then what did you do, sir?

A. I continued on up to the barbershop where the—At that time I found out it had been Mr. Rockwell which had finally crawled out of his car and laid on the blacktop at that time.

Q. When did you tell the police this story, sir.

A. There were several police who came on there. I think there was one, I don't recall his name, he came and he wanted a description of the man and I gave it to him and I think he short-waved it around.

Mr. Hassan: I have no further questions of this witness, Your Honor.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Did you get a deer, Mr. Stuart?

A. Yes.

Mr. Hassan: I think we ought to explain to the Jury what he was doing while we were looking for him.

Mr. Morris: Both sides were looking for him.

Mr. Harrigan: He was deer hunting.

Gordon Alexander

By Mr. Harrigan:

Q. Mr. Stuart, you said you saw a man and you said he had on dark clothes, as I recall, is that right?

page 1750 } A. Yes sir.

Q. Now, could you describe the clothes? Did it appear to be a dark suit?

A. It appeared to be a dark suit to my distance. I would say it looked like a blue serge suit.

Q. All right.

Now, did you notice the color of the shoes?

A. They were dark. I could not—as much as I know, they were not white. There was no contrast in the shoes.

Mr. Harrigan: Thank you Mr. Stuart.

The Court: May the witness be excused?

Juror: Which end of the building, of this building of the wall, is it that you refer to?

The Witness: This end of the building. I would say it's at the north end of the building. It's coming toward Washington.

The Court: You mean the building towards Washington?

The Witness: Yes.

REDIRECT EXAMINATION

By Mr. Hassan:

Q. What tenant is in that end of the building?

A. Sir?

Q. Who's in that store on that end of the building?

page 1751 } A. The Goodwill. That's where the wall starts.

The Court: Are there any further questions?

Mr. Harrigan: No.

The Court: May the witness be excused?

Mr. Hassan: Yes, he may be excused, Your Honor.

The Court: You're excused and free to go.

Mr. Hassan: Gordon Alexander.

Whereupon, GORDON ALEXANDER, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

Gordon Alexander

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you state your name, sir, and your occupation?

A. Officer Gordon Alexander, Arlington County Police Department, Identification Section.

Q. Now, sir, I'd like to show you Commonwealth's Exhibits No. 10A through D, A, B, C, and D.

The Court: Those are in evidence?

Mr. Hassan: Yes.

By Mr. Hassan:

Q. Would you tell us, sir, whether or not those page 1752 } are pictures you took?

A. Yes sir, they are.

Q. When did you take those pictures?

A. 25th of August.

Q. Where did you take them?

A. 1033 North Larrimore Street.

Q. Now, I show you Commonwealth's No. 10E and F for identification, sir, and ask you whether or not you took those pictures?

A. Yes sir, I did.

Q. And when did you take those?

A. On the 25th of August.

Q. And where did you take those?

A. 1033 North Larrimore Street.

Mr. Hassan: I offer those in evidence at this time, Your Honor.

The Court: May I look at them?

Mr. Hassan: Yes.

The Court: What are they, 10E and F?

Mr. Hassan: 10E and F.

Mr. Harrigan: These are the same ones I objected to. They're showing a picture of just of a dark coat, the dark side, and obviously there's a light side, too. But page 1753 } for some reason, they just show the dark side. I think they have been offered before and I objected to them.

Mr. Hassan: Yes they have. Quite a few times they were offered before and will be offered again.

Gordon Alexander

Mr. Harrigan: I think they're fairly made photos but it's merely a posed picture.

The Court: Objection is sustained.

Mr. Hassan: Exception, if Your Honor please.

I have no further questions of this witness.

The Court: All right.

Officer, you're excused.

Mr. Morris: If Your Honor please.

The Court: Hold it a minute.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now you took pictures of John Patler at what time, do you recall?

A. After I fingerprinted and had taken Mr. Patler's photograph around 3:00, 3:45, or something like that on that day, the 25th of August.

Q. Now, was he wet at that time?

A. I can't recall, sir. I didn't notice.

Q. Would you remember pictures reflecting page 1754 } whether he was or was not?

A. No sir, I don't believe they would.

Mr. Harrigan: That's all right. Now, let me ask you something else.

By Mr. Harrigan:

Q. I show you a picture, 45A, did you take any picture of that area which is the wall by the Seven Eleven Store, I mean the Goodwill, the back of the Goodwill store?

A. No sir, I did not.

Q. Were you in that area?

A. No sir.

Mr. Harrigan: That's all.

REDIRECT EXAMINATION

By Mr. Hassan:

Q. Now, these pictures that you took on the afternoon of the 25th of August at Police Headquarters of the defendant were they—some of those pictures taken were Polaroid film?

Gordon Alexander

A. Yes sir, they were.

Q. Did they turn out good?

A. No sir.

Q. What was the trouble?

A. The film, Polaroid film, colored film I had taken from the refrigerator in the dark room but it was not the
page 1755 } proper temperature and it didn't develop correctly.

Mr. Hassan: No further questions.

The Court: All right, sir, you're excused.

Mr. Hassan: I must apologize, Your Honor, we moved a great deal faster than I anticipated. My next two witnesses are out of town and are scheduled to be here in the morning.

The Court: All right. I don't think anyone will resent an extra hour this evening.

Ladies and gentlemen we'll recess until 10:00 o'clock tomorrow morning.

Gentlemen, the Commonwealth's Exhibits 52A through D got lost in the shuffle somewhere and Mr. Harrigan objected. It appears to me to go to the fact that they don't show the shoes in the condition they were when they were taken from the defendant in so far as they were wet.

Mr. Harrigan: No, Your Honor, the objection was in so far as whether the tar was where it is now. That's apparently what they purport to show and not that they were wet.

The Court: No. They don't show as it is now because they testified that they show the tar deposits as they were before he removed the deposits to work on it.

Mr. Harrigan: That's the way they looked
page 1756 } when they took them from Patler; was the tar smears the same, that's my objection. It's not whether they were dry or not.

Mr. Hassan: I believe you have admitted into evidence the pants and I think they also show that it was possible that the tar on the pants came from the shoes, that there was sufficient tar and it will not eliminate speculation as to where the tar on the pants came from.

The Court: I'm inclined to agree.

Mr. Hassan: I offered them in fairness, Your Honor.

The Court: Since I admitted the shoes and since the shoes admittedly have been altered in appearance by these testimonies, it seems to me to become material only to show that

Morris Samuel Clark

the shoes when examined were in contrast with the appearance to the Jury today.

Mr. Hassan: There is a streak of tar on the pants. They should have that before them.

The Court: I over ruled the objection and admit them. I think perhaps they're more helpful to the defendant than the Commonwealth. 52A through D will be admitted.

(Whereupon, Commonwealth's Exhibits No. 52 A through D were entered into evidence.)

Mr. Hassan: I would say they're probably
page 1758 } more helpful to fairness than either side.

The Court: Of course, both sides are in favor of that.

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The Court: Call the jury.

(The jury was polled.)

Mr. Hassan: Mr. Clark.

Whereupon, MORRIS SAMUEL CLARK was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. My name is Morris Samuel Clark, and my address is 7820 Yorktown Drive, Alexandria, Virginia.

Q. What is your occupation, sir?

A. I am a special agent of the Federal Bureau of Investigation, assigned to the FBI Laboratory in Washington.

Q. What are your duties, sir, in that laboratory?

A. I make examinations of hairs, fibers, fabrics, clothing and related material.

Morris Samuel Clark

Q. What is your background and training for this duty?

A. I have a Bachelor of Arts Degree, a major page 1763 } in botany from Indiana University, a Masters in forestry from Harvard University, and after being transferred to the laboratory I underwent a year's training under experienced, older, experienced examiners until such time as the laboratory considered me qualified and since then I have examined a large number of cases on my own responsibility.

Q. Have you engaged in conducting any training in this field?

A. Yes, I have written training outlines for our own agents for National Academy. I give frequent lectures to law enforcement groups, pathologists and others concerned with this field.

Q. Sir. I show you Commonwealth's Exhibit No. 42 and 43 for identification and ask you, sir, whether or not you had occasion to examine these documents or exhibits.

A. Yes, I did.

Q. What examination did you make of Exhibit No. 42?

A. I examined Exhibit 42 to see if there were any visible or invisible laundry marks, any labels, any hairs, anything that would help establish ownership.

Q. Did you find a label?

A. Yes, there is a label in the cap, the exhibit. Would you like me to read the label?

page 1764 } Q. Yes, please.

A. It says, "Big Murph, sanforized, washable, union made, seven and one-fourth."

Q. Now, did your examination of Exhibit 42 disclose anything to you?

A. No, I found no hairs in the cap. I found no visible or invisible laundry marks.

Q. What examination did you make of Commonwealth's Exhibit No. 43?

A. I likewise examined the coat, Exhibit 43, for presence of any labels, visible or invisible laundry marks, hairs in the pockets, anything else of any possible significance that might be in the pockets.

Q. Did you find anything in that coat, sir?

A. I found no hairs, no visible or invisible laundry marks, no hairs. I did find one item in a pocket.

Q. Is that item still in the pocket?

A. Yes, it is.

Morris Samuel Clark

Q. Did you examine that item?

A. Yes.

Mr. Harrigan: Your Honor, that item isn't in evidence. I don't know what it is, but I would like to approach the bench.

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Mr. Harrigan: My objection is obvious. I don't know what they are talking about, but it is obvious there hasn't been any discussion about it yet and it is pretty apparent that they have had the coat the whole time, or at least, would have appeared to. Whatever the item is, they haven't laid any foundation for it and it certainly seems to me that they have testified nothing was in the coat when they found the coat and how that got in there, I think, is kind of important. I don't know what it is.

Mr. Hassan: All of the testimony, Your Honor, in regard to the coat has been that the first examination of the coat was made at the FBI. No one examined the pockets of the coat, touched the coat in any way other than to carry it down and put it in the property room and transfer it there. This is the man who found what the first item is and it went to the FBI as part of our exhibit, and went to the FBI for examination. This is the man that went into the coat for the first time and found the item. The item was in the pocket all the time.

The coat was examined by defense counsel when it was offered for identification.

Conf. 11/28/67 Mr. Morris: There was testimony at the preliminary hearing when Lieutenant Kadel testified, there was nothing in the pockets.

Mr. Harrigan: I remember we had a preliminary hearing on this, too. Now, John Kadel was on the stand. The question was asked, "Did you look through the pockets of the coat. What was in there?" "Nothing." Let's put Kadel back on the stand and ask him that.

Mr. Hassan: When I get through with this witness, Your Honor. This was the man that found it.

Morris Samuel Clark

The Court: I think the Commonwealth is entitled to try, if they can, to attach the coat to the defendant, which is the reason it's been excluded from evidence. However, you certainly have the right then to cross-examine and recall John Kadel about this.

Mr. Harrigan: Your Honor, I think we ought to call John Kadel first because I want to know when it was in the pocket. It wasn't in the pocket when he found it and it's had to been put in sometime after that. The coat has been here and there and so on and Nazi Headquarters and everywhere else.

Mr. Hassan: That isn't my recollection of what Conf. John Kadel said. It isn't what he said at all. This 11/28/67 is not a transcript of what he said here.

page 5 } Mr. Harrigan: He said it September 28th.

Mr. Hassan: He said differently here on the stand and you had that in your hand when you cross-examined him. You didn't ask him a question about that.

The Court: As I recall, there was no testimony in this trial about anything in the pockets.

Mr. Hassan: No questions were asked about it either.

The Court: I don't remember it being brought up, so I guess he's got an absence of testimony on it. However, I will certainly permit you to call him.

Mr. Harrigan: Let's call him first.

The Court: No, I don't see any reason to do that.

Mr. Harrigan: We would object. There's no foundation.

Mr. Hassan: This is the man who found it. He is going to identify it.

Mr. Harrigan: It's been through a chain of God knows how many witnesses and all have said there was nothing in the pockets. He's gone through fifteen witnesses and all have said there were nothing in the pockets.

The Court: It seems to me that if this is some Conf. link in the chain with which the Commonwealth 11/28/67 wishes to try to show a connection between this exhibit and the defendant, they are entitled to try to do it. You, conversely, are entitled to tear that down by cross-examination or by calling witnesses of your own, but there is nothing inadmissible about this testimony. You can later show that, if you can, it is untrue or fabricated or otherwise, but the Commonwealth has a right to present it. It is relevant to the issue.

Mr. Harrigan: I except to the Court's ruling on the grounds previously stated.

Morris Samuel Clark

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Q. Mr. Clark, what did you find in the pocket?

A. I found a portion of a pair of panty hose. It's one leg and a portion of the back is missing and the lower end of the leg that is still on the panty hose has several overhand knots tied in it.

Q. Did your examination of that disclose anything else, sir?

A. Well, there's a label that reads, "Medium, 100% stretch nylon, 5'3" to 5'6", but I found no visible or invisible laundry marks and no hairs.

Q. Did you find any damage to that item?

A. Just the fact that one leg and a portion of the back is missing.

Q. Now, in your examination of the coat, sir, what type of examination did you make?

A. Again I examined it for identifying marks and for the presence of hairs and for size.

Q. What was the result of your examination, sir?

A. The coat is approximately a size 36, short. I found no visible or invisible laundry marks on it, no labels on it, no hairs in the pockets or on the outside of the
page 1766 } coat.

Q. I have no further questions of this witness,
Your Honor.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, that stocking that you are talking about. Who gave the coat to you?

A. Special agent Johnson.

Q. Was there a stocking in it when he gave it to you, when he received it, do you know that?

A. I don't know that. All I know is what was in it at the time I looked at it myself.

Q. Your Honor, we'd like to call Lieutenant Kadel who found the coat.

Morris Samuel Clark

The Court: I will let you complete your cross examination.

By Mr. Harrigan:

Q. Did you get a property list with it? Did you find one?

A. I did not.

Q. Do you have the property list?

Mr. Hassan: 23876. There are two sheets. I think it is D and N. Which one have you got there?

Mr. Harrigan: This is N.

Mr. Hassan: He wants D.

page 1767 } By Mr. Harrigan:

Q. Is your name on this property slip anywhere, either one of them?

A. No.

Q. How about on this one (indicating)?

A. No.

Q. Now, I want you to read that property slip that is supposed to reflect what you received. Is there anything about a stocking on that?

A. I don't see any reference to a stocking.

Q. What size hat were you supposed to receive on there? What does it say?

A. It says seven and one-half.

Q. Is this a seven and a quarter?

A. According to the label.

Q. You have got a seven and a quarter size hat and a stocking that doesn't show up, and that says seven and a half?

A. That's right.

Q. That's all.

REDIRECT EXAMINATION

By Mr. Hassan:

Q. Did anyone else in your lab make an examination of that coat, sir?

A. I don't know. I gave the coat back to Special Agent Johnson, and I don't know whether he gave it to anyone else for any other type of examination.

Q. Was an examination made of it before you got it?

Morris Samuel Clark

Mr. Harrigan: How does he know that? I object.

The Court: If he knows.

The Witness: I don't know.

By Mr. Hassan:

Q. Did you make any examination of anything else in this case?

A. Yes, sir.

Q. What did you examine?

A. A towel.

Q. Did you mark the towel when you examined it?

A. Yes.

Q. I'd like to show you Commonwealth's Exhibit No. 8-A for identification, sir, and ask you whether or not that is the towel you examined.

A. Yes, it is.

Q. What type of examination did you do on that, sir?

A. I examined it to see if I could find any visible or invisible laundry marks on it.

page 1769 } Q. Did you?

A. No, I did not.

Mr. Harrigan: Your Honor, I object. He is going beyond cross examination. I didn't talk about a towel.

The Court: I will let him go ahead and let you have recross on it.

Mr. Hassan: Who did you receive it from?

The Witness: Special Agent Johnson.

Mr. Hassan: Who did you give it to?

The Witness: Special Agent Johnson.

Mr. Hassan: No further questions.

Mr. Harrigan: No questions.

The Court: May the witness be excused?

Mr. Hassan: He may be excused, Your Honor.

The Court: You are excused. Thank you.

(Witness excused)

Mr. Hassan: Next witness, Mr. Hopkins. I don't know whether he is up here or not. May we approach the bench?

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Mr. Hassan: There will be a problem. Mr. Hopkins is a proprietor of a gun shop which sold the gun. He left Richmond this morning. He had, at that time, the original sales slip. He does not now find it on his person. He has made every effort to locate it. Whether he found it or not, I don't know. Apparently, it's been lost. He has stated he is still searching for it. I would like to proceed with him and have the photostatic copy with the understanding that the original can be substituted for the photostatic copy if it is found, and if it is found it would have to be found at a gas station at which he stopped on the way up here.

The Court: With that kind of testimony, it would probably need the best evidence rule as to the requirement with the photostat anyway.

Conf. 11/28/67 page 7 } Mr. Hassan: I just had a note which tells me all of this, because he sent his wife to the car to get an envelope and then he can't remember whether he put the envelope in the car, and the woman riding with him said he did, but they weren't able to get it. They called the State Police and they called the store. I left instructions with him to call the store and he said it might be in his raincoat. They looked and couldn't find it. He took it out of the records to bring it in and thought he had put it in his coat pocket. The State Police are checking the gas stations and they were going to pick it up and bring it up here.

It's now found.

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Mr. Harrigan: Could we call Lieutenant Kadel as long as that is fresh in the jury's mind?

The Court: Do you want leave to call him as a defense witness out of order?

Mr. Harrigan: I will take leave, Your Honor.

The Court: Does the Commonwealth have any objection to that?

Mr. Hassan: I have no objection.

The Court: Lieutenant Kadel?

Mr. Hassan: He isn't out there. It will be a long time.

The Sheriff: Mr. Hopkins is here.

Cecil Arnold Hopkins

The Court: All right. Let Mr. Hopkins come in and then put in a call to the police department and ask Lieutenant Kadel to come in.

Whereupon, CECIL ARNOLD HOPKINS was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. Cecil Arnold Hopkins, Route 4, Glen Allen, Virginia.

Q. What is your occupation?

page 1771 } A. I am a merchant. I sell guns, ammunition and supporting goods.

Q. Sir, did there come a time when you had occasion to examine your records to determine whether or not you had sold a Mauser, number 98119711?

A. I will check the number, sir, and I can tell you. Yes, sir, I did.

Q. When did you sell that gun, sir?

A. The 19th day of March, 1962.

Q. Do you have the original sales slip there, sir?

A. Yes, sir, I do.

Q. I'd like to have this marked Commonwealth's Exhibit No. 53 for identification.

(The sales slip referred to above was marked Commonwealth's Exhibit No. 53 for identification.)

Q. Now, sir, I ask you whether or not the purchaser signed that record at the time of the sale?

A. Yes, sir, she did.

Q. Was that signed in your presence?

A. Yes, sir.

Q. Is there another signature on there?

page 1772 } A. None other than my initials.

Q. Your initials?

A. Yes, sir.

Q. Is the sales slip in your handwriting?

A. Yes, sir.

Q. Now, sir, I show you Commonwealth's Exhibit No. 44-A

Cecil Arnold Hopkins

and ask you, sir, whether or not that is the gun that you sold under that sales slip?

A. This has the same serial number, sir; it should be.

Q. I noticed that your sales slip says you sold a 30-caliber, and that has been classified as 7.63 millimeters. What is the difference?

A. It shoots a 30-caliber Mauser. It's referred to as a 30-caliber rather than a 7.63.

Q. That is the gun that you sold on that sales slip, sir?

A. Yes, sir.

Q. I'd like to offer this sales slip in evidence, Your Honor.

The Court: Is there an objection?

Mr. Harrigan: No objection.

The Court: It will be received marked Commonwealth's Exhibit 53.

page 1773 } (The sales slip previously identified as Commonwealth's Exhibit No. 53 was received in evidence.)

Mr. Hassan: I have no further questions, Your Honor.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, looking at this sales slip it says on the bottom signed by a "Mrs. Robert A. Lloyd, Jr."

A. That's right.

Q. Was that the mother or his wife, do you know? Do you remember?

A. I couldn't tell you that, sir. I assume it was his mother.

Q. What is the purpose of somebody signing it down below?

A. That is just to show they received the gun.

Q. So his mother would have received the gun?

A. That's right.

Q. Now, on the sales slip it doesn't say anything about ammunition. So apparently you didn't sell him any at that time.

A. If I did, which I don't recall, it is not
page 1774 } listed.

Q. Wouldn't it ordinarily be listed and just added up?

A. Not necessarily, sir.

Cecil Arnold Hopkins

Q. You don't make a sales slip when you sell ammunition?

A. No, sir.

Q. But suppose they buy a gun and ammunition at the same time? What would your practice be?

A. Normally, it would be listed. However, I can't say for sure, but I don't recall.

Q. Do you remember whether Mrs. Lloyd had anybody with her?

A. At this particular time I cannot say. I would assume she had her son with her, but I am not positive.

Q. I see.

The Court: May I see that, Mr. Harrigan?

This is your handwriting at the top where it says "Sold to," isn't it, sir?

The Witness: Yes.

The Court: Does that say Mrs. Robert A., senior or junior?

The Witness: It says junior.

The Court: So both of those names are page 1775 } junior, both at the top and at the bottom of the sales?

The Witness: Yes, sir.

The Court: One is in your handwriting, and the other presumably is hers?

The Witness: Yes, sir.

Mr. Harrigan: Could I see that other one?

On the bottom of this you had a certification, "I hereby certify I am a citizen of the United States and have not been convicted nor am I under indictment for any crime of violence and not a *fugitive* from justice nor a drug addict." Do you always ask that question?

The Witness: We usually show it to them. Some read it, and some don't. That is up to the individual person.

Mr. Harrigan: Do you recall ever selling Mr. Lloyd any other guns?

The Witness: I don't ever recall selling Mr. Lloyd any gun from memory.

Mr. Harrigan: Okay, thank you.

The Court: Any further questions? May the witness be excused?

Mr. Hassan: He may be excused. Thank you very much.

The Court: Thank you, Mr. Hopkins.

Mrs. Murray Ellis Moon Lloyd

page 1776 } The Witness: Can I get this back?

Mr. Hassan: Let me show the photostat to the defense. They may not want it. It is a certified photostat. They may not want it in there without additional testimony.

Defense counsel will agree, Your Honor, they would not want this one to go to the jury, but will allow this to be substituted at the conclusion of the case.

The Court: All right.

Mr. Hassan: So I will retain this.

The Witness: Fine, sir.

The Court: You will get them back at the end of the case.

The Witness: Thank you, sir.

(Witness excused)

Mr. Hassan: Mrs. Lloyd? She's been remarried. I do not know her new name.

Whereupon, MRS. MURRAY ELLIS MOON LLOYD was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

page 1777 } Q. I apologize. I have forgotten your name.

I called out Mrs. Lloyd. Will you please tell us?

Also, your address?

A. Mrs. Murray Ellis Moon Lloyd. I live at 4020 Fauquier Avenue, Richmond, Virginia.

Q. Directing your attention to March, 1962, was your name then Mrs. Robert Lloyd, Jr.?

A. Mrs. Robert A. Lloyd, Jr., yes.

Q. Now, Mrs. Lloyd, did there come a time when you had occasion to go to the Greentop Services and purchase a gun in March of 1962?

A. Yes, I did.

Q. What kind of a gun was that?

A. I really don't know what kind of a gun it was. It was a gun that I purchased for my son. He examined the gun and decided upon the gun. It was my son's money which paid for the gun, and I agreed to buy the gun for him.

Q. How old was he at that time?

A. He was 17.

Mrs. Murray Ellis Moon Lloyd

Q. Now, I'd like to show you Commonwealth's Exhibit No. 53 and ask you whether or not that is your signature.

A. Yes, it is.

Q. Is that the place of business where you purchased the gun?
page 1778 } A. Yes.

Q. Have you ever purchased any other gun?

A. No, I have never purchased another gun.

Q. That is the only gun you have ever purchased?

A. Yes, sir.

Q. Now, I'd like to show you Commonwealth's Exhibit No. 44-A and ask you whether you recognize this as the gun that you purchased.

A. I wouldn't really recognize it as being the gun, because we looked at a number of guns, and my son decided upon the gun.

Q. Did your son take possession of that gun then or some time later?

A. He took possession of it then.

Q. Have you seen this gun since then?

A. Yes, I have seen the gun in the home where he kept that with another gun that he had which was a hunting rifle, and I had seen the gun in the home, but I hadn't seen it for a number of years.

Q. You haven't seen it for a number of years?

A. No, I never saw the gun after my son became affiliated with the American Nazi Party.

Q. Was he affiliated with the American Nazi Party at the time he got the gun?
page 1779 }

A. No, he was not. Not at the time he bought the gun. He bought his gun as his buddies had a collection of guns, and he owned one gun which his father had given him, and he wanted a gun of his own and saved his money and set it up on guns, studied up on guns, and then he owned a gun the same as the other boys did.

Q. Thank you. I have no further questions.

The Court: Mr. Harrigan?

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, you say you bought this gun or your son bought it?

Mrs. Murray Ellis Moon Lloyd

The Court: Now, she didn't identify the gun.

By Mr. Harrigan:

Q. Or a gun similar to this. I think the gun has been identified.

A. Yes, sir.

Q. Not your 17-year-old son?

A. That's right.

Q. Was your son going to school then?

A. Yes, he was in high school.

Q. Was he under psychiatric care then?

page 1780 } A. No, not at that time.

Q. Was it later that he went under psychiatric care?

A. No, it was previously. He was released from psychiatric care.

Q. He was. From where was he released?

A. From Tucker Hospital, I think it's called, not sanitarium but hospital, in Richmond, Virginia.

Q. Tucker Sanitarium?

A. Where he was for four days.

Q. Would you describe the circumstances under which he was sent to Tucker Sanitarium? Was it violent conduct?

A. No.

Mr. Hassan: If Your Honor please, I am going to insist that it be one question at a time.

The Court: The objection is sustained.

By Mr. Harrigan:

Q. Just describe what caused that, if you will.

A. In my son's senior year, having gone into his senior year in September, I was separated from my husband some part of that previous summer, and along about the month of December of that year, my son was under a lot of pressure with school work and family problems which caused him a great deal of upset with his father entering the home a lot after, causing a lot of disturbance, and my son became upset and wasn't doing much of his school work with missing some time and wishing to quit school, and the school authorities really didn't want to see him drop out of school because they considered him a brilliant and outstanding student, and they wanted him to carry on, and his counselor did suggest that maybe he have a few con-

page 1781 }

Mrs. Murray Ellis Moon Lloyd

ferences with the psychiatrist and that he would be straightened out. And he was under the care of a psychiatrist, probably a couple of months, and the psychiatrist did think that he should go into the hospital for a little further observation than he could give him. I think the psychiatrist is right now in the field, and they kept him in the hospital just about four or five days, and he was released by one of the chief psychiatrists in the city of Richmond.

Q. I see. So as I understand it, he was going to a psychiatrist for a couple of months, is that right?

A. I think altogether it was probably about eight weeks.

Q. As a result of these visits was it recommended that he be institutionalized briefly?

Mr. Hassan: If Your Honor please, that is a misconstruction of what the testimony was.

page 1782 } Mr. Harrigan: That is exactly what she said.

The Court: The objection is sustained, but not on that grounds. There is no need to sum up the testimony she has given.

By Mr. Harrigan:

Q. All right. Was your son ever put in a straight-jacket to your knowledge?

A. Not to my knowledge.

Q. Not to your knowledge. Now, was he ever given any shock treatment?

A. No.

Q. Who signed the commitment papers for your son to the hospital?

A. I did.

Mr. Hassan: I hope he has something to produce before he asks that type of a question.

Mr. Harrigan: It is obvious from the Virginia Code that she would have to sign them.

Mr. Hassan: It is not so obvious from the Code. We give them private treatment out of the Juvenile Court every day of the week, and there are no commitments.

The Court: You gentlemen are off on a side issue that is hardly relevant. You have answered the question. Go ahead.

page 1783 }

Mrs. Murray Ellis Moon Lloyd

By Mr. Harrigan:

Q. Now, what was his age when he had this problem?

A. He was 17; he was 16 and he turned 17 in January.

Q. So as I understand you to say, he had just turned 17 when you bought him the gun?

A. That's right.

Q. Now, how many months had he been out of this institution prior to your bringing him that gun?

A. Several months. He was cured and given a note to attend school.

Q. He was? Did he finish school?

A. Yes, sir, he did. He graduated in June of that year when he was 17.

Q. Do you know when he joined the American Nazi Party?

A. He joined the American Nazi Party after he was 18 years old. That is when he joined it.

Q. Was he out of school then?

A. Yes, he had started into college at Stetson University at DeLand, Florida, and he gave up his studies to come back; to work full-time for George Lincoln Rockwell.

Q. Did he quit college?

A. Yes, he did quit college.

page 1784 } Q. Is that when he joined the Nazi Party?

A. Yes.

Q. In the interim period, what did he do from the time he quit college to the time he joined the Nazi Party? He was a drunk, wasn't he?

Mr. Hassan: If Your Honor please, I am going to object to this.

The Court: The objection is sustained.

By Mr. Harrigan:

Q. Did you know he was going to join the American Nazi Party?

A. No, I didn't know he was going to join. I knew he was interested in it.

Q. Was he living home prior to his joining the Nazi Party?

A. Yes, he was living at home with me.

Q. The whole time?

A. I think he came and stayed in Arlington, Virginia, several weeks after that summer.

Q. How was his appearance during that time? Was it normal?

Mrs. Murray Ellis Moon Lloyd

A. His appearance?

Q. Yes.

page 1785 } A. I don't know exactly what you mean by appearance.

Q. Was he clean-shaven and dressed normally like other people or did he have a long beard on him?

A. No, he never had a beard.

Q. He never had a beard?

A. He never had a beard.

Q. Now, after he joined the Nazi Party, did he then move to Arlington or move away from your home?

A. Yes, he did. He lived with the other men and all.

Q. Did your son ever take dope to your knowledge?

A. No, he didn't.

Q. Are you saying no, he didn't, or not to your knowledge?

A. No, he didn't. He took medication which I don't consider dope, tranquillizers under a doctor's prescription.

Q. Who was the doctor?

A. His name was Jacob Haladys and also Asa Shields at Tucker Hospital.

Q. Do you operate a nursing home in Richmond?

A. No, I don't operate the nursing home.

Q. Or your former husband?

A. He may be attending the rest home which my son operates in Richmond, Virginia. My son has a license and operates a nursing home in Richmond, Virginia.

Q. Does he have drugs there under his license? Can he have drugs?

A. Since it is a rest home, I am sure that he would not, the same as a nursing home.

The Court: Is this the same one we have been discussing?

The Witness: Yes, he operates a rest home and has operated the nursing home. It will be two years this coming January up until two months ago; not two months ago, maybe six weeks ago.

By Mr. Harrigan:

Q. Now, you say—

A. That is not my son's beard on that picture.

Q. Let me show you a picture.

A. You can buy that in any Halloween costume store.

Q. Will you look at it, ma'am?

Mrs. Murray Ellis Moon Lloyd

A. I have seen it. I am familiar with the picture.

Q. I see. You say that is not your son?

A. I say that is my son; that is not my son's beard.

Q. I'd like to have that marked for identification.

page 1787 } (The photograph referred to above was
marked Defendant's Exhibit for identification.)

Mr. Hassan: I am going to insist that I be allowed to examine that whole thing and not just what he is tearing out of it. He's offered it for identification, and it's been marked, and I haven't been shown it. He's now mutilating it.

Mr. Harrigan: Your Honor, the only thing I want is the picture.

The Court: It appears to be a magazine. Do you propose to show the whole thing or just the picture?

Mr. Harrigan: Just the picture.

Mr. Hassan: I think I am entitled to take the whole thing. If they want to take something out, they better not mutilate it after it's been identified.

The Court: Mrs. Lloyd, what is your son's name?

The Witness: My son's complete name? Robert Allison Lloyd, and he is the third.

Mr. Harrigan: I have just been informed that in this picture I showed Mrs. Lloyd was a set of false whiskers, and I didn't know that when I asked her the questions.

Mr. Hassan: If Your Honor please, I would like to approach the bench.

* * * * *

Conf.

11/28/67

page 7 }

* * * * *

Mr. Hassan: No notation apparently was on it when he showed it to her.

Mr. Morris: He just showed it right two seconds ago.

Mr. Hassan: I am not going to have any more of these tricks.

The Court: This is what prompted the remark.

Mrs. Murray Ellis Moon Lloyd

Mr. Hassan: But this writing on it and this announcement to the jury, Your Honor—

Conf. The Court: But the jury hasn't seen it.

11/28/67 Mr. Hassan: They heard everything that was page 8 } said.

Mr. Morris: We will get another one without writing on it.

Mr. Hassan: Built it up strong and knock it down. I wouldn't have asked the question without knowing the answer.

The Court: I take it that you do not now wish to introduce this in evidence.

Mr. Harrigan: No, I don't. It's worthless.

The Court: The whole thing is moot.

Mr. Hassan: I would like you to instruct them, there is to be no more writing on anything that is shown to the jury or to mutilate it any way.

* * * * *

page 1788 }

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The Court: We will take a short recess. Don't discuss your testimony with any other witnesses until you get back on the stand.

The Witness: Okay.

(Whereupon, a short recess was taken.)

The Court: Call the jury.

Had you completed your cross examination?

Mr. Harrigan: No, Your Honor.

The Court: All right, go ahead.

By Mr. Harrigan:

Q. Were any of the diagnoses on your son that he had aggressive tendencies?

A. No.

Q. You said that your son had one other gun prior to getting this one, namely this one in evidence.

A. There were two rifles which belonged to his father as I understand it, but—

Mrs. Murray Ellis Moon Lloyd

Q. That was the rifle you were discussing?

A. Yes.

Q. Does your son own any other gun?

A. Not to my knowledge.

Q. Have you ever seen a German Luger, 9-
page 1789 } millimeter automatic in the possession of your
son?

A. No, I haven't seen any in the possession of my son.

Q. Have you ever seen the German P-38 9-millimeter auto-
matic?

A. I don't know one gun from another. I know some of his
friends had guns, and they enjoyed occasional guns, other
boys did, but I only know that my son has a rifle and this
gun in question.

Q. Maybe I should ask you this. Did you ever see any
other pistols in your son's possession?

Mr. Hassan: I didn't hear what the word was you used,
Mr. Harrigan.

Mr. Harrigan: Pistols.

The Witness: I have seen other pistols in the home where
the boys brought their guns at times.

By Mr. Harrigan:

Q. Doesn't your son have a collection of German weapons?

A. I don't know that he has a collection of German wea-
pons. I really don't know.

Q. When you bought this gun for your son, at the same was
there any ammunition bought?

page 1790 } A. No, I don't think so. I don't remember.

Q. Do you know if your son has any ammuni-
tion at his home?

A. I have no idea.

Q. Now, to the best of your knowledge, has your son seen a
psychiatrist since he was discharged from Tucker Institu-
tion?

A. No, I am sure that he hasn't.

Q. Had your son been in trouble with the Richmond police
prior to your first seeing that gun?

A. No, never.

Q. He never has?

A. No, not to my knowledge.

Q. Are you saying not to your knowledge or he never has?

A. He never has, to my knowledge.

Mrs. Murray Ellis Moon Lloyd

Q. Have you ever seen your son target practice or know that he has target practiced?

A. I knew that he did target practice and rifle shot under authority of a Richmond policeman who said it was a proper and legal place for the boys to target practice, but I have never seen him.

Q. Was it with this gun that he target practiced, do you know?

A. I imagine that was the gun he used. I knew that he did go to target practice.

Q. Then he must have bought bullets for it sometime or other.

Mr. Hassan: If Your Honor please, that was a conclusion by counsel with a witness even as she answered it.

The Court: She already said she didn't know.

Mr. Harrigan: All right. That's all.

The Court: Any redirect?

REDIRECT EXAMINATION

By Mr. Hassan:

Q. Does Robert A. Lloyd, Jr., operate a nursing home any where?

A. It is a rest home. It is listed as Lloyd's Rest Home. Robert J. Lloyd, Jr., manager, and he does operate the rest home for the elderly in Richmond, Virginia.

Q. Does he operate one in Danville?

A. I am not sure.

Q. This is your former husband?

A. This is my son who operates the nursing home.

Q. How about your former husband?

A. I do not know of my former husband, what page 1792 } his operations are.

Q. Was he in the rest home field when you married him?

A. It was a nursing home which operated as Lloyd's Nursing Home for about twenty years and up until two years ago when my husband wanted to be out of the field of the nursing home work, and he turned it over to my son who acquired a license as a rest home operator.

Q. When your son went to the psychiatrist, did I understand you to say that was recommended by the school authorities?

Mrs. Murray Ellis Moon Lloyd

A. Yes.

Q. Did they recommend the psychiatrist, too?

A. Yes, his school senior counselor, a man I had known for about twenty years.

Q. Recommended him?

A. Yes.

Q. Did he recommend a particular doctor?

A. He didn't suggest any doctor.

Q. Now, at this time was your son suspended or expelled from school?

A. No, he never had been expelled. He was simply excused. He was not expelled.

Q. During the period of the time that he was
page 1793 } seeing the psychiatrist, was he attending school
or was he out of school?

A. He was attending school only other than the few days he was in the hospital.

Q. What was the purpose of him going in the hospital, if you know?

A. Only that this psychiatrist who was attending him wanted more or less for his work with him to be verified that he was coming along well.

Q. Did you authorize any tests to be made?

A. No, I didn't authorize any tests.

Q. Was there another doctor attending him while he was there those three or four days?

A. No, only the doctors who operate the hospital.

Q. How long has it been since you have lived in the same home with your son?

A. Since the fall of the year when he started in college which was in '62 or '63.

Q. Since that time he has not lived in the home with you?

A. That's right.

Q. Is he married?

A. Yes, he is married.

page 1794 } Q. Does he have his own separate home?

A. Yes, he has his own home.

Q. How long has he been married?

A. It will be two years this coming January.

Q. I have no further questions, Your Honor.

The Court: May the witness be excused?

Mr. Harrigan: I have one or two other questions, Your Honor.

Mrs. Murray Ellis Moon Lloyd

The Court: All right, sir, go ahead.

RECROSS EXAMINATION

By Mr. Harrigan:

Q. Now, you say the other gun that you know of that he had was given to him by his father?

A. Yes, his father purchased that gun.

Q. And that is Robert Lloyd, Sr.?

The Court: Senior. The father is senior, and the son is the third.

Mr. Harrigan: Is that the same Robert Lloyd that was arrested for threatening the life of President Johnson?

The Witness: Yes, Your Honor.

Mr. Hassan: Objection, Your Honor. We have long since stopped making the wife of the son account for the crimes and the sins of the father.

page 1795 } The Court: Objection sustained. Irrelevant.

Mr. Harrigan: Did the father undergo any psychiatric treatment?

The Court: I would think that would be irrelevant, too. The father is not involved here as a witness as far as I know.

Mr. Harrigan: She has stated that because of the condition in the home the son apparently had some sort of problem which required psychiatric treatment.

The Court: She said it was because she and her husband had been separated because of domestic tension.

Mr. Harrigan: That is what she said, and I think since she opened the door on that, I think I have the right to show the background in the home and where everybody was taking psychiatric treatment.

Mr. Hassan: I don't think we are going to try a domestic situation in this court, Your Honor.

The Court: Objection sustained.

Mr. Harrigan: Exception.

That is all. Thank you, Mrs. Lloyd.

The Court: Mrs. Lloyd, you are excused. Thank you.

(Witness excused)

page 1796 } Mr. Hassan: I understand they wanted to have Lieutenant Kadel.

John Kadel

The Court: Did you want to call Lieutenant Kadel at this time?

Mr. Harrigan: Yes, sir.

The Court: Call Lieutenant Kadel.

You were previously sworn in this case. Lieutenant Kadel is called as a defense witness, Mr. Harrigan.

Mr. Harrigan: Thank you, Your Honor.

Whereupon, JOHN KADEL resumed the stand, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION

By Mr. Harrigan:

Q. Do you know why you are being called back to the stand, Lieutenant Kadel?

A. No, I do not.

Q. You haven't talked to anybody about why you are to come back?

A. No.

Q. I show you Commonwealth's Exhibit No. 43. Now, you previously testified that you got that coat page 1797 } from—

A. Would you repeat that, please?

Q. You previously testified that you received this coat from a Mrs. Freeman.

A. Let me see if it was the same one.

Q. All right.

A. Yes, sir.

Q. Now, did you look through the pockets of that coat?

A. Yes, I did.

Q. When you looked through the pockets, did you find anything?

A. No, sir.

Q. No further questions.

The Court: Mr. Hassan?

CROSS EXAMINATION

By Mr. Hassan:

Q. How did you look through the pockets?

A. Just stuck my hand in.

John Kadel

Q. Stuck your hand in? Did you feel anything in them?

A. No, sir.

Q. Do it again now for the jury.

A. (Indicating)

Q. Nothing in there, is there?

A. No, sir.

page 1798 } Q. Now, does that have two pockets or four
pockets?

A. I'd say it has four now.

Q. How many did you look at that day?

A. Two.

Q. No further questions.

REDIRECT EXAMINATION

By Mr. Harrigan:

Q. Now, let me show you a picture. You had it turned the other way around the day you were looking at it, didn't you?

A. That's correct.

Q. You had the dark side out that day, didn't you?

A. That's correct.

Q. Would that normally be the pocket you would have looked in that day?

A. I don't recall whether I looked in the pockets of the dark side or the light side. I don't recall. I looked in two pockets.

Q. Do you recall if you put your hand in all four?

A. I did not put my hand in four pockets.

Q. Stick your hand in the other pocket.

A. This? (Indicating)

Q. Did you ever see that before?

page 1799 } A. No, I did not.

Q. Do you know where it came from?

A. No, I do not

Q. Do you know how it got in the pocket?

A. No, I do not.

Q. Does anybody, to your knowledge?

A. To my knowledge, no.

Q. Now, let me ask you something. How many other people handled that other than you?

A. I'm the only one that handled the coat until I turned it in. From then on, I can't answer you.

Q. You got your picture in the newspaper with two guys holding it, didn't you?

A. Not to my knowledge.

John Kadel

Q. I will recall him and show him the picture. I don't have the picture with me. Maybe I do.

The Court: Mr. Harrigan, what would be the probative value of a picture of him with someone else? He testified no one else handled the coat. Someone else in the picture wouldn't prove if that was true or false, would it?

Mr. Harrigan: It came from some place; it could have been put in there by mistake by somebody in the police department.

page 1800 } Mr. Hassan: After the last picture, I'd think he would stop fooling around with pictures.

Mr. Harrigan: If they are not worth anything, look at all those (indicating).

Mr. Hassan: There is one other there that isn't worth very much.

Mr. Harrigan: I will recall him later. That's all.

Mr. Hassan: One question, Your Honor.

By Mr. Hassan:

Q. Before you put your hand in that back pocket and pulled that out on that stand, did you know there was anything in that coat?

A. No, I did not.

Q. No further questions.

The Court: All right, Lieutenant.

The Witness: Am I excused, Your Honor?

Mr. Hassan: Subject to call.

(Witness excused)

Mr. Hassan: If Your Honor please, my next witness is going to be a real long witness, and I would prefer to start him after lunch rather than just barely get started.

The Court: You have got twenty minutes to page 1801 } half an hour of direct. I don't mind interrupting in the middle of direct.

Mr. Hassan: That's not enough time for direct on this next witness.

Mr. Harrigan: Who is it? Robert Lloyd?

Mr. Hassan: If Your Honor please, I would prefer not to. I would like to have the jury hear this whole direct testimony in one sitting on him, and there are many phases of this ex-

Edward F. Hawkins

amination. I do think that our lunch time has been unrealistic. We have consistently taken more than an hour and fifteen minutes, and I don't think we would be out of line to be resuming at the regular time if we went to lunch at this time.

The Court: The jury has had difficulty getting served and getting back here in an hour sometimes.

A Juror: We would be glad to have anything brought in.

The Court: Counsel also has to have time to prepare themselves to argue and talk to witnesses and get prepared for what is to come, so they can use these breaks and so can I sometimes to take care of other matters that I have pending in the other room.

We will recess, then, until 1:30.

page 1802 } AFTERNOON SESSION

The Court: Call the jury.

Mr. Hassan: Officer Hawkins?

Have you been sworn, sir?

The Witness: Yes, sir.

Whereupon, EDWARD F. HAWKINS was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Please state your name and your occupation.

A. Edward F. Hawkins, police officer, Arlington County.

Q. Directing your attention to on or about the 25th day of August, 1967, were you on duty with the Arlington County Police Department?

A. Yes, sir, I was.

Q. What shift were you working?

A. I was working seven to three.

Q. What vehicle were you in?

A. It is a traffic—it is an unmarked car.

page 1803 } Q. What color is it?

A. It is white.

Q. What year?

A. It is a 1966 Ford.

Q. Is that the same as Inspector Cole's car?

A. It is the same color. Yes, sir.

Edward F. Hawkins

Q. Now, directing your attention to a period from twelve o'clock until 12:30, what duty were you performing?

A. I was up on the north side in the vicinity of Bon Air Park looking for the subject.

Q. When Detective Davis' radio call came out on the air, where were you?

A. At that time I was westbound on Washington Boulevard.

Q. Where had you come from?

A. We had come up Jefferson Street to 11th Street, went east on 11th to Illinois where we made a left, went to Washington Boulevard at the stop sign and made a left to go west on Washington Boulevard.

Q. How far from Illinois and Washington Boulevard were you when you heard the call?

A. I'd say approximately a couple of blocks, two blocks.

Q. What did you do then?

page 1804 } A. We went to Kennelworth Street and swung
a U-turn and then went east on Washington Boulevard.

Q. Did you go to Harrison and Washington Boulevard?

A. Yes, sir.

Q. Did you stop there?

A. No, sir, we made a right at Harrison. We did not stop.

Q. No further questions of this witness.

The Court: Any questions, Mr. Harrigan?

Mr. Harrigan: No questions, Your Honor.

The Court: May this witness be excused?

Mr. Hassan: He may be excused.

The Court: All right, sir.

(Witness excused)

The Court: Next witness?

Mr. Hassan: Mr. Lloyd?

The Court: Members of the jury, we will take a short recess. Will you retire to the jury room?

(Whereupon, a short recess was taken.)

Mr. Hassan: Robert Lloyd?

The Court: You have been sworn?

The Witness: Yes, sir.

Robert A. Lloyd, III

page 1805 } Whereupon, ROBERT A. LLOYD, III was called as a witness on behalf of the Commonwealth, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name and your address?

A. My name is Robert A. Lloyd, III, 6150 Wilson Boulevard.

Q. How long have you been living there, Mr. Lloyd?

A. Since October the 19th.

Q. Prior to that, where did you live?

A. 60 Fickwin Lane, Richmond, Virginia.

Q. How long did you live there?

A. About eighteen months, I believe.

Q. Are you married, Mr. Lloyd?

A. Yes, sir.

Q. Are you a member of the Nazi Party?

A. Yes, sir.

Q. How long have you been a member of it?

A. I believe since 1962 or '63. I believe it's early 1963.

Q. Now, where were you living then, Mr. Lloyd?

page 1806 } A. Well, I had left Richmond shortly before I joined the party and moved up to Arlington.

Q. Now, did there come a time when you became the owner of this gun, Commonwealth's Exhibit 44-A?

A. Yes, sir.

Q. Well, maybe you better look at it. I might have switched them on you.

A. Yes, sir.

Q. Where did you get that gun, sir?

A. I bought it at Greentop Gun Sales in Hanover County.

Q. How old were you at that time?

A. Either 16 or 17.

Q. Who was with you when you bought it?

A. My mother.

Q. What were you doing at that time in regards to an occupation?

A. I was going to school and working in a service station.

Q. What school were you going to?

A. John Marshall High School.

Robert A. Lloyd, III

Q. Is that a high school?

A. Yes, sir.

page 1807 } Q. What year were you in?

A. That was my senior year, I believe.

Q. Now, at the time that you bought this gun, did you buy anything else?

A. I bought some ammunition.

Q. How many guns did you own at that time?

A. I think I owned one other. Well, I owned another rifle, and I think I owned one other hand gun.

Q. What kind of a gun was that hand gun?

A. That was a P-38, I believe.

Q. Where did you get that gun?

A. I bought it at the same place.

Q. How old were you when you bought that gun?

A. I believe I bought that the same year I bought this other gun.

Q. Who was with you at that time?

A. A friend of mine I knew in Richmond was with me when I bought that. His name was William Ballowe.

Q. Was that gun sold to you or to him?

A. That was sold to him.

Q. When did you bring Exhibit 44-A to Arlington?

A. 1963, I believe.

Q. 1963. Did you bring any other gun?

page 1808 } A. Yes, sir, I brought my P-38 and I believe another gun I owned which was a 32-caliber pistol, and I believe also a Browning 9-millimeter pistol.

Q. Did you bring them when you first joined the Nazi Party?

A. I don't believe so. I think I brought them several months later.

Q. What was the occasion for bringing these guns to the Nazi Party?

A. Well, I had moved into the barracks on 6150 Wilson Boulevard, and I wanted to have all my possessions in one place.

Q. Did there come a time when any list was made of these guns?

A. Yes, sir.

Q. Who made the list?

A. I made the list. I made one list and the lists were made periodically, and I know that I made several lists, brought

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them up from time to time and some people before me made lists, and I guess some people after me made lists.

Q. I'd like to show you this, sir, and ask you whether or not you can recognize this.

A. I believe this is the list that I made in page 1809 } 1964, if I am not mistaken.

Q. Did you put this writing on here (indicating)?

A. No, I don't think so.

Q. I'd like to have this marked for identification as Commonwealth's Exhibit 54.

(The list referred to above was marked Commonwealth's Exhibit No. 54 for identification.)

Q. Now, sir, as of the date you believed you made this, how many guns did you have that were on that list registered to you?

A. I think there must have been about four hand guns. I'm not positive, but I know that Mauser pistol was on there and I think one rifle.

Q. Did there come a time when you had a 9-millimeter Luger?

A. Yes, sir.

Q. When did you acquire that gun?

A. I really can't remember; it must have been somewhere about 1962 or so.

Q. Do you still have that gun?

A. Yes, sir.

Q. Where is that now?

page 1810 } A. Let's see. I believe that is with my possessions in Richmond.

Q. Did you own a Walther P-38 9-millimeter?

A. Yes, sir.

Q. Where did you get that gun?

A. At Greentop Gun Sales in Hanover County.

Q. When did you get it?

A. I got that the same year I got the Mauser pistol.

Q. Do you still have that gun?

A. Yes, sir.

Q. Do you own a Browning automatic pistol, 9-millimeter?

A. Yes, sir.

Q. When did you get that gun?

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A. I believe I bought that from a fellow while I was in college in Florida. I'm pretty sure that is where I got that.

Q. Do you still have that gun?

A. No, sir.

Q. Where is that now?

A. I sold that to a fellow when I needed some money.

Q. Do you have a Swiss army rifle with straight pull bolt action?

page 1811 } A. Yes, sir.

Q. When did you get that gun?

A. I got that rifle in 1962, I believe.

Q. Do you still have that gun?

A. Yes, sir.

Q. Do you have a Mark I, Enfield rifle, number 4?

A. I know I had one of these at one time, but I don't know whether I have it at that time or not. I guess I did if it is on the list.

Q. Where did you get that?

A. I bought that at Woolworth's or Murphy's.

Q. Do you still have that gun?

A. No, sir.

Q. Where is that now?

A. I believe I gave that away. It didn't work, anyway.

Q. Do you know who you gave it to?

A. It seems to me like I gave that gun to Mr. Karl Pyron, a friend of mine.

Q. Do you have a Mauser pocket pistol, early model 32-caliber?

A. Yes, sir.

Q. Where did you get that gun?

page 1812 } A. I believe I got that from a friend of mine in Richmond.

Q. Do you still have that gun?

A. No, sir.

Q. Where is that gun now?

A. I gave that to my father.

Q. When did you give that to him?

A. About a year ago, I think. He keeps it at his cottage on the river.

Q. Now, directing your attention to Commonwealth's Exhibit 44-A, did there come a time when you loaned that gun to anyone?

A. You mean the Mauser pistol?

Q. The Mauser pistol.

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A. Yes, sir.

Q. Serial 9811?

A. Yes, sir.

Q. When was that?

A. That was in the fall of 1964.

Q. Where was that?

A. That was at 928 North Randolph Street.

Q. Who did you loan that gun to?

A. John Patler.

page 1813 } Q. What was the purpose for loaning John Patler a gun?

A. He was the only person of any authority at the headquarters on North Randolph Street, and it was loaned to him for security purposes in the event anything violent happened over there.

Q. Do you recall when that was in 1964?

A. It was late 1964. I guess it was the fall of the year.

Q. Did there come a time when that gun was returned to you?

A. No, sir.

Q. Did there come a time when you thought to get the return of the gun?

A. Yes, sir.

Q. When was that?

A. That was in the fall—I mean, excuse me, I believe it was the winter of 1965.

Q. Where was it that you tried to get the return of this gun?

A. In the headquarters at 928 North Randolph Street.

Q. Did there come a time when you talked to John Patler about this gun?

page 1814 } A. Yes, sir.

Q. What did he tell you, if anything?

A. He said he couldn't find it. He had either mislaid it or it had been stolen.

Q. Did there come a time when you ever saw that gun again after that night?

A. No, I saw it I guess it must have been a couple of weeks before he told me that. He had a friend of his in his room who wanted to buy the gun from me, and I told him I would sell it to him, but he didn't want to pay me as much as I wanted for it, and I guess it was a couple of weeks or a month after that that I asked for it, because I was going to write up another list of the arms that the organization had, and it was then that Patler told me that he couldn't find it.

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Q. Since that have you seen it up to August 25th?

A. No, sir.

Q. Did you see it on August 25, 1967?

A. I think it was the day afterwards, I saw it in the police station.

Q. On the 26th?

A. I am not completely sure of the date. It was either the day after or two days after. I really don't remember what date it was, but it was in late August after the assassination that I saw it in the police station.

Q. Did John Patler ever give you any explanation of how this was missing?

A. Well, he told me that he just couldn't find it, that it might have been stolen or mislaid. I inquired about the gun after the IRS seized—

After the Internal Revenue Service seized the headquarters at 928 North Randolph Street, and I believe that was in 1966, in the winter of 1966, and I was told either by John Patler or somebody else, I believe—

Mr. Harrigan: I object, Your Honor.

The Witness: It was either John Patler or Alan Welsh.

Mr. Harrigan: Just a minute.

The Court: If you know anything that John Patler said to you, you may say what he said, but anything anyone else said to you would be hearsay, and you could not relate that.

Mr. Hassan: If Your Honor please, I would like to have that ruling a little bit more explicit because I believe he would be entitled to say concerning a matter of this kind what anybody else might have said to him in the presence
page 1816 } of John Patler.

The Court: If this remark was made by someone other than John Patler, was it in the presence of Patler or not, or do you know?

The Witness: I frankly don't remember.

The Court: Then you may only give quotations attributed to John Patler unless you remember they were made in his presence by someone else.

The Witness: The only thing I remember is that I was told—

By Mr. Hassan:

Q. Do you remember whether John Patler told you or not?

A. No, sir, I don't remember who it was that told me.

Robert A. Lloyd, III

Q. Let's go on to another question, then.

How long have you known John Patler?

A. I believe I met him in 1963, during the winter of 1963.

Q. Where did you meet him?

A. At 928 North Randolph Street.

Q. How long have you known him?

A. Since 1963.

Q. Has he continuously since 1963 been affiliated with the Nazi Party?

A. No, sir.

Q. Have you been continually affiliated with the Nazi Party in Arlington since 1963?

A. Not in Arlington. No, sir.

Q. Did there come a time when you left Arlington?

A. Yes, sir.

Q. Where did you go?

A. I went to Richmond.

Q. When was that?

A. That was late—no, that was in the beginning of 1966.

Q. Was John Patler affiliated with the Nazi Party in Arlington County at that time?

A. Yes, sir. Excuse me, he might have been in Spotsylvania at that time. I am not completely certain of that. It was either Arlington or Spotsylvania.

Q. But he was in Virginia?

A. Yes, sir.

Q. Had there been a time prior to that when he was not affiliated with the Nazi Party?

A. Yes, sir.

Q. How long a period was that?

A. Well, I don't know. I believe he left the Party in 19—

Mr. Harrigan: Your Honor, these vague beliefs that the witness has I object to. If he has some firsthand knowledge, then I think he can testify, but these vague generalizations I will object to.

The Court: The objection is overruled. You may question him on cross examination as to what the vagueness is. It may be vagueness as to date or vagueness as to knowledge.

Mr. Harrigan: I object. I think he ought to lay a proper foundation as to firsthand knowledge. I don't think the proper foundation has been laid.

The Court: Objection overruled.

Robert A. Lloyd, III

Mr. Harrigan: Exception.

The Witness: I am only vague as to that. I knew Patler left the organization in the early sixties.

By Mr. Hassan:

Q. When did he come back?

A. The year was 1963, as far as I remember.

Q. Then all the time you were here, he was here, either here or Spotsylvania?

A. No, sir. I had been in the Party about a year before he came back, and then after the time that he came back I was in the organization also until I left in early 1966.

Q. Did there come a time when George Lincoln Rockwell had a debate with Stokely Carmichael?

A. Yes, sir.

Q. When was that?

A. I don't remember. I only read about it in the Party newsletter. I might be able to remember it if I think about it.

Mr. Harrigan: I object.

The Witness: I think I can remember if I think.

The Court: He answered positively that it occurred. The present question is as to the time, so it wouldn't be hearsay as to the fact of occurrence.

The Witness: I knew he had a debate with Stokely Carmichael.

By Mr. Hassan:

Q. Where did he have the debate?

A. In Chicago.

Q. What kind of debate was it, or what media?

A. A television debate.

Q. A television debate in Chicago?

page 1820 } A. Yes, sir.

Q. Do you know what television system it was on?

A. No, sir.

Mr. Harrigan: Your Honor, I move to strike his answer. If he didn't see it on television, he only knew it through hearsay, and he doesn't know whether it came on. I don't think the proper foundation has been laid then. I move to strike his answer.

Robert A. Lloyd, III

The Court: Let me ask you, what was the source of your information that this debate had taken place?

The Witness: The inter-Party newsletter.

Mr. Harrigan: If that was the case, anyone could understand and read the inter-Party newspaper.

The Court: The objection is sustained, and the jury will disregard that.

Mr. Hassan: I want a recess before I finish with this witness.

Do you remember what year that debate was?

Mr. Harrigan: Same objection, Your Honor.

The Court: The objection is sustained because apparently his only basis for knowledge that it even took place at all was something he read in a publication which would be hearsay, I think. You are interested in not just the page 1821 } fact of utterance, but the truth of what it said so I think it is hearsay.

By Mr. Hassan:

Q. Did you ever hear a recording of it?

A. Yes, sir, I heard a recording of parts of it. I didn't hear the whole thing.

Q. Where did you hear that?

A. I played the recording in my home down in Richmond.

Q. Where did you get the recording?

A. From Matt Koehl, Major Matt Koehl.

Q. Did the recording identify itself?

A. I am sorry, I can't remember whether it did or not.

Q. From the recording, do you know what year the debate was?

Mr. Harrigan: Objection, Your Honor.

Mr. Hassan: We established there was a debate.

Mr. Harrigan: He hasn't even established he was listening to the same recording.

The Court: I will let him answer that yes or no. Did the recording itself give the date, and if so, do you remember the date?

The Witness: No, sir, I don't remember page 1822 } whether the recording gave the date or not.

The Court: All right.

By Mr. Hassan:

Q. Do you remember when you played the recording?

Robert A. Lloyd, III

A. Yes, sir, I think I played the recording this spring, in the spring of this year.

Q. Did there come a time when you played the recording when John Patler was present?

A. No, sir.

Q. Do you know whether or not anybody else played the recording?

Mr. Harrigan: Your Honor, I would object. How would he know unless somebody told him? Nobody was there apparently.

The Court: You don't know that. The objection is overruled.

The Witness: My wife and I listened to the recording.

By Mr. Hassan:

Q. Do you know of anyone else that did?

A. No, sir.

Q. Now, during the course of time that you were affiliated with John Patler in the Nazi Party, what was
page 1823 } your rank?

A. I was a captain.

Q. What was his rank?

A. A captain.

Q. Did there come a time when you had transactions with each other?

A. Yes, sir.

Q. During that period of time did you receive from him any items in his own handwriting?

A. Yes, sir, I got memorandums from him occasionally.

Q. Would you recognize his handwriting?

A. Yes, sir, I think I would recognize his handwriting.

Q. I'd like to show you Commonwealth's Exhibit 5-G, sir, and ask you whether or not you recognize the handwriting on 5-G.

A. The "confidential" up at the top looks like Patler's writing, and his signature looks like his.

Q. Now, would you read that to yourself and answer this question, yes or no? Have you seen that or the original of it at any time?

A. No, sir, I never saw that.

Q. What is your rank in the Nazi Party at this time?

A. I don't have any rank. I am the circulation manager of our ideological journal.
page 1824 }

Robert A. Lloyd, III

Q. What kind of a journal?

A. It is an ideological journal. It discusses the ideology and philosophy of our movement.

Q. Were you active in the Nazi Party in Arlington in the late winter and early spring of 1967?

A. No, sir.

Q. What were you doing at that time?

A. Running a business down in Richmond.

Q. I show you Commonwealth's Exhibit No. 43 and ask you to take out of that bag, take a look at it and tell me if you recognize it, and please answer yes or no.

A. John Patler had a reversible jacket—

The Court: The question was answer the question yes or no, whether you can identify that particular item.

The Witness: I'd have to say—

Mr. Harrigan: Objection, that is not responsive. It is yes, no and—

Mr. Hassan: You can say yes or no, and then explain your yes or no.

The Court: You may say yes or no and explain your answer.

The Witness: I will have to say no, because page 1825 } I don't know for sure that this is the same jacket that Patler used to have when I knew him, but he had one that for all practical purposes looked exactly like this.

Q. When was that?

A. Well, as long as I knew him. I believe he had this kind of jacket.

Q. Now, did he wear it frequently?

A. Yes, sir.

Q. Did he wear one side out more than the other?

A. Yes, sir, he usually wore the black side out.

Q. I have no further questions of this witness, Your Honor, at this time.

I do want to go and get that one other item and come back to that question, Your Honor.

Mr. Harrigan: I'd just as soon let him get it, Your Honor.

The Court: Why don't you proceed with your cross examination, and then I will let him have a brief recess in order to do it?

Robert A. Lloyd, III

Mr. Hassan: It will only take me as long as it takes the elevator, Your Honor.

Mr. Harrigan: All right.

The Court: I instructed Mr. Hassan not to
page 1826 } break up this direct examination before lunch.

Mr. Hassan: It is just the bulletin to which we referred that I want him to identify.

The Court: Will the jury please retire?

(Whereupon, a short recess was taken.)

Whereupon, ROBERT A. LLOYD, III resumed the stand, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Mr. Lloyd, you referred to a bulletin that you had seen. I wil' ask you to look at this, sir, and tell me, please, yes or no, can you identify that?

A. Yes, sir—

Q. Don't tell me what it is for the moment, please. Is that the bulletin to which you refer?

A. Yes, sir.

Q. I'd like to have this marked for identification, Commonwealth's Exhibit 55.

(The bulletin referred to above was marked Commonwealth's Exhibit No. 55 for identification.)

page 1827 } Q. Does this bulletin refresh your memory as to when that debate was held?

Mr. Harrigan: Objection.

The Witness: Yes, sir.

Mr. Harrigan: He didn't write the bulletin himself.

The Court: I think that objection is well taken. He testified before his only source of information was the bulletin itself, and he is relying upon it for the information he has. He didn't write it, so it is hearsay to him. The objection is sustained.

Mr. Hassan: I offer the bulletin into evidence.

Robert A. Lloyd, III

Mr. Harrigan: I object to the bulletin. It is nothing more than a hearsay document.

The Court: The objection is sustained.

Mr. Hassan: No further questions.

CROSS EXAMINATION

By Mr. Harrigan:

Q. Now, Mr. Lloyd, did you were around the age of 16 where were you living?

A. With my mother in Richmond.

Q. What school did you go to down there?

A. John Marshall High School.

page 1828 } Q. Did there come a time when you had some problems in school there which necessitated you seeing a psychiatrist?

A. Yes, sir.

Q. Did you see a psychiatrist?

A. Yes, sir.

Q. Were you ever confined in any institution?

A. I guess you could put it that way. I was put in the hospital for observation for several days.

Q. Who recommended that you go in the hospital for observation?

A. The school.

Q. The psychiatrist?

A. Sir?

Q. Was it the psychiatrist?

A. I don't know; I guess it was. The school recommended that I see the psychiatrist.

Q. What psychiatrist did you see?

A. Jacob Haladys was the psychiatrist I usually saw.

Q. When you initially saw him, over what period of time did you talk to him or did he treat you?

A. I guess I saw him about once a week for a couple of months. I guess it was about two months.

Q. Was it at the end of that time he recommended that you be confined for observation?

page 1829 } A. I believe, yes, sir, it was at the end of the time when I was seeing him that he recommended that I go to the hospital.

Q. What hospital?

A. Tucker Hospital.

Q. What hospital is that?

Robert A. Lloyd, III

A. It is just a hospital.

Q. For mentally disturbed people?

A. I don't know. They have a lot of alcoholics there, not that I was an alcoholic. I don't know whether it was strictly a psychiatric type hospital or not, really.

Q. But you were there for psychiatric reasons, is that right?

A. Yes, sir, I was there to be examined. My understanding was that I was just being examined and not treated.

Q. Just what was your problem? Do you know?

A. Well, my parents were having marital difficulties at the time and as a result I wasn't able to sleep or concentrate too well, and in addition to that the school seemed to feel like my political sentiments might suggest that something were wrong with me.

Q. Did you have violent reactions against
page 1830 } certain individuals? Is that what you are tell-
ing us?

A. No.

Q. Now, did the psychiatrist tell you to go there to be treated for your aggressive tendencies?

Mr. Hassan: I didn't understand that.

Mr. Harrigan: Were you sent for observation because of your aggressive tendencies, your violent nature?

Mr. Hassan: I am going to object to that, Your Honor. He just answered the question.

The Court: The objection is sustained. He said he didn't have such tendencies.

By Mr. Harrigan:

Q. Did you say that?

A. I don't remember whether I did or not, but I didn't particularly. I don't think I am particularly aggressive, any more than anybody else. That wasn't the reason I went there, anyway.

Q. All right.

Now, after you left the hospital did you continue under any psychiatric care?

A. No, sir.

Q. Were you discharged?

A. Yes, sir.

page 1831 } Q. Did you go back to school there?

A. Yes, sir.

Robert A. Lloyd, III

Q. How old were you then?

A. Seventeen.

Q. At what point was this gun purchased by you or for you, Commonwealth's Exhibit 44?

A. At what point? Do you mean what date?

Q. Yes.

A. Well, I was either 16 or 17 at the time.

Q. Was it shortly after you got out of the hospital?

A. No, sir, I bought that before I went in and got an examination or anything.

Q. Is that right?

A. To the best of my memory; that was a mighty long time ago. I can't be positively sure.

Q. Was that the first gun that you had or did you have another one at that time?

A. No, I had a Walther P-38 before I bought that Mauser pistol.

Q. Is the P-38 a German gun?

A. Yes, sir, it is. I think it is the one that I had. It wasn't manufactured in Germany, though. It was made in Czechoslovakia, I have been told, but it is a German design 1832 signed gun.

Q. How old are you now?

A. Twenty-two.

Q. At the time that this 30-caliber Mauser was purchased, did you buy bullets at the same time?

A. Yes, sir.

Q. Do you recall what type of bullets?

A. 30-caliber Mauser bullets.

Q. American bullets or surplus?

A. Surplus.

Q. Now, what was the next gun that you acquired?

A. I'm sorry, I don't recall what order I acquired them in.

Q. You did acquire a series of guns within a very short time, is that correct?

A. Yes, sir, over a period of a year, I guess. I got six guns, maybe eight.

Q. Many of them were German pistols or German type pistols?

A. Yes, sir, three of them were. The Luger and the P-38; I guess the small Mauser pistol was a German, too, in addition to this other one, the Mauser 30-caliber pistol. So I guess there were four, altogether.

Robert A. Lloyd, III

page 1833 } Q. Now, you had in addition to the 30-caliber
German Mauser, a German Mauser 32-caliber?

Is that right?

A. Yes, sir.

Q. You had a German Luger 9-millimeter automatic?

A. Right.

Q. You had a Belgium Browning 9-millimeter automatic?

A. Yes, sir.

Q. Is that a pistol?

A. Yes, sir.

Q. You had a German P-38 9-millimeter automatic, is that right?

A. Yes, sir.

Q. When did you graduate from high school?

A. In 1962, I believe. Yes, sir, '62.

Q. How soon after you graduated from high school did you join the Nazi Party?

A. In the summer of 1962 I came to Arlington and stayed at my uncle's who lived in Springfield and went over to Arlington to absorb as much of the ideology of the movement as I could. At the end of the summer I went to college and stopped college before the end of the first semester and came back to Richmond and went to work, and then after my 18th birthday, I moved up to Arlington and joined
page 1834 } the organization full-time.

Q. You said you were living with your uncle when you were up there that summer?

A. I stayed at his house in Arlington, I mean, Springfield.

Q. Did you live there?

A. Yes, sir.

Q. Or were you living somewhere else?

A. I lived at his house.

Q. When did you come up full-time?

A. That was in early 1963, shortly after my 18th birthday, I believe. As a matter of fact, my birthday was on January the 3rd, and I believe I came up here on January the 4th or 5th.

Q. Did you bring your guns with you at that time, or did you bring them up at a subsequent time?

A. I brought them up later when I moved all my possessions up to Arlington.

Q. How much later?

A. I don't remember.

Robert A. Lloyd, III

Q. Was it a relatively short period of time before you brought them all up?

A. Yes, sir, it was fairly soon.

page 1835 } Q. Did you bring up all the guns that we had talked about?

A. Yes, sir.

Q. That would be some seven guns?

A. I don't remember how many it was.

Q. Let me show you this list.

A. Yes, sir.

Q. Is that accurate?

A. Yes, sir.

Q. Do you know when this list was made up?

A. No, sir, I do not know the exact date.

Q. At the end of the list do you see a "3-1-65"?

A. Right.

Q. Do you recognize whose writing that is?

A. No, sir.

Q. That would indicate March 1, 1965?

A. Yes, sir.

Q. Is that right?

A. Right.

Q. Now, on this list you are noted as owning a Mauser 30-caliber.

A. Yes, sir.

Q. And you said this was the Mauser 30-
page 1836 } caliber?

A. Yes, sir.

Q. How do you know what it is?

A. Well, I recognize this "SA" stamped on the side of it which I have been told is a peculiar marking, and there are some scratches on the bottom of this magazine plate that I put on myself.

Q. You put them there yourself?

A. Right, when I was trying to take it apart one time.

Q. Just when was that?

A. I don't remember when.

Q. Well, think.

A. I think it was in 1962.

Q. Do you recognize these scratches on the bottom?

A. Yes, sir, these ones right around there (indicating).

Q. You haven't seen this gun in how many years?

A. Well, since 196—early 1965.

Q. It's over two years ago. Is that what you are telling us?

Robert A. Lloyd, III

A. Um, hum.

Q. Did you target practice with that gun?

A. Yes, sir.

Q. Did you shoot up all the shells that you
page 1837 } had?

A. Yes, sir.

Q. How many of them did you have?

A. I believe I had 50. I think two small boxes of them; two boxes of 25 each, I think, is how many I had.

Q. Who was with you when you were doing your target practicing?

A. A friend of mine by the name of Buck Byron and Eric Byron.

Q. Where was it that you did this?

A. One time we went to a gravel pit adjacent to the police range in Richmond and another time we went to Isaac Walton's in Richmond, outside of Richmond.

Q. Did you target practice with your own guns also from time to time?

A. Yes, sir, from time to time.

Q. Did you bring all the guns up to Arlington at the same time?

A. I frankly don't remember. I think so, though.

Q. When you brought them up to Arlington, where did you take them?

A. I took them to the barracks where most of them were kept locked up.

Q. That barracks is located where?

page 1838 } A. 6150 Wilson Boulevard.

Q. That is where you are presently residing?

A. Yes, sir.

Q. Now, you say that you loaned that gun to John Patler.

A. Yes, sir.

Q. This was back when?

A. I loaned it to him in the fall of 1964.

Q. When in the fall of 1964?

A. I don't remember when. Approximately November.

Q. About November of 1964?

A. Yes, sir.

Q. Just where was he when you loaned him this gun?

A. At 928 North Randolph Street.

Q. What did you do? Go up to Wilson Boulevard and get it and bring it down?

A. Yes, sir.

Robert A. Lloyd, III

Q. Was anybody else there when you loaned it to him?

A. Yes, sir.

Q. Who?

A. Harry Blair was there.

Q. Who was Harry Blair?

A. He was a man who watched the desk down-
page 1839 } stairs. You mean who was in the room when I
handed it to him?

Q. Yes.

A. I remember distinctly that a man named David Peterson
was there, but I don't remember for sure whether Harry
Blair was there for sure or not.

Q. Now, you had your own personal gun, I suppose, didn't
you?

A. Yes, sir, I had one that I kept in my room.

Q. What kind was that?

A. It was a P-38.

Q. That is a 9-millimeter?

A. Yes, sir.

Q. What kind of gun did they use for barracks duty at
North Randolph Street?

A. For a long time they used a 45 automatic, army 45, but
at one point, and I don't remember the year or anything else,
it was changed to a Smith & Wesson 38 revolver.

Q. You say that you asked for this gun back from Patler
in early '65?

A. I am sorry, I can't remember just when it was.

Q. Let me refresh your recollection. Did you testify on
September 28th in a proceeding in this courthouse of this
year?

page 1840 } A. Yes, sir, if that is the date of the prelimi-
nary hearing, that is when I was here.

Q. You were asked that question, "When did you ask for it
back?" What was your answer?

A. Yes, sir.

Q. What was your answer?

A. It says, "I asked for it back in early 1965."

Q. Did you ask for it back in early 1965, or don't you re-
member?

A. Yes, sir, a lot of things have happened since then and
to the best of my recollection it was early 1965.

Q. That was prior to that list being made up, wasn't it?

A. Yes, sir, but this writing on here on the bottom of this
list is not mine.

Robert A. Lloyd, III

Q. I didn't ask you that. But that list was made up March 1st, '65, is that right?

A. No, sir, I can't swear to that.

Mr. Hassan: If Your Honor please, I am going to object to that. Mr. Harrigan has seen it and that is not what it said. It didn't say when it was made up.

The Court: He earlier testified as to when it was made up. My notes indicate it was made up, he thought, in page 1841 } '64.

By Mr. Harrigan:

Q. What does it say on the bottom of the list?

A. The bottom of the list has written as of "3-1-65" and it has some initials here that look like P.S.C. or something like that. I assume they are initials.

Q. Now, is it P.S.C. or R.S.C.?

A. I am not sure.

Q. Would you recognize Inspector Cole's initials if you saw them?

A. No, sir.

Q. Now, when you say that you asked for it back, did you say that you were informed that it had been stolen?

A. Yes, sir, I was informed that it was mislaid or stolen. Patler had said at any rate that he couldn't find it, and made remark to the effect that he would look for it and see if he could find it.

Q. Now, you say you never saw the gun again until August 26th, is that right?

A. Yes, I believe the date was August 26th.

Q. Now, in 1965, were you engaged in a "Rockwell for governor" campaign?

A. Yes, sir.

page 1842 } Q. Where was that?

A. It was located in Richmond. That was the central headquarters.

Q. Was there a campaign headquarters down there?

A. Yes, sir.

Q. Who was in that headquarters working at that time?

A. There was Mr. Chuck Graul, and there was Lee Carpenter and for awhile Robert F. Pace.

Q. Do you know of Frank Smith?

A. Yes, sir. I know him.

Q. Was he down there?

Robert A. Lloyd, III

A. No, sir.

Q. You didn't see him?

A. He dropped in once in a while.

Q. He was down there once in a while?

A. Yes, sir, he dropped in, but he wasn't there permanently. He didn't live there.

Q. How about the girl by the name of Claudia? Was she down there?

A. Yes, sir, she was down there for about a month or six weeks.

Q. What was her job at that time?

A. General secretarial work.

page 1843 } Q. When was that campaign? When did that headquarters open up, do you know?

A. It opened in the late spring. It opened in the summer of 1965.

Q. When did it close?

A. It closed in late October of 1965. No, sir, excuse me, that was late November, rather, 1965, it closed.

Q. All right, and you were there in and out of the place working, is that right?

A. Yes, sir.

Q. After this gun was reported stolen to you, did you ever inform anybody that it was missing?

A. No, sir, because the only time it left a distinctive impression with me was when he said he would look for it and try to turn it up.

Q. So you never told anybody until August 26th, apparently?

A. Well, I made it known to people that it was missing.

Q. Who?

A. Quite a large number of people; to Patler himself, to Alan Welsh, to Matt Koehl. I made it known to other people, but these are the only ones that I remember specifically.

Q. Did you have occasion to draw a picture
page 1844 } of a gun at any time?

A. Yes, sir.

Q. When did you draw that picture?

A. Well, either the same day or the day before I identified that Mauser pistol at police headquarters, I drew a picture—

Q. That would be the 25th or the 26th of August, 1967?

A. Yes, sir, or possibly the 27th, and drew a picture at our barracks, at 6150 Wilson Boulevard of the general outline

Robert A. Lloyd, III

of the type of gun that I had lost or that had been reported missing to me by John Patler.

Q. Then you drew a picture of this Mauser, I take it?

A. Yes, sir. It was meant to describe the Mauser.

Q. Now, the 25th, before the gun was found late in the afternoon of the 26th, nobody was looking for a Mauser 7.63, so how did you happen to draw a picture of it?

Mr. Hassan: He didn't say he drew a picture of the gun the 25th, Your Honor. He said he drew a picture of it the day before he saw it or the same day, the day before he saw it, but he didn't know what day that was.

By Mr. Harrigan:

Q. You drew a picture before you saw it, page 1845 } didn't you?

A. Yes, sir, I drew a picture of it before I saw it.

Q. How did you happen to draw a picture of that gun?

A. I was asked by an Arlington detective if I had ever lost a gun or had a gun stolen from me, and I said yes, I had, and he asked me what kind it was, and I described it to him, and he asked me what it looked like, and I described it to him, and he asked me to draw a picture of it, and I drew a picture as best I could.

Q. This was after Rockwell had been shot, is that right?

A. Yes, sir.

Q. Did you tell the detective at that time that you had loaned the gun to Patler?

A. Yes, sir.

Q. You knew they were looking for that gun or a gun like it in connection with the shooting of Rockwell, didn't you?

A. No, I didn't know that they were even looking for a gun at that time.

Q. You didn't know it?

A. No.

Q. Don't you read the papers?

A. Well, as far as I remember, there hadn't been anything brought up about looking for a gun until the following day when they showed the newsreels of the officer finding the gun. In other words—

Q. Why would a police officer come up and ask you have you lost a gun?

Robert A. Lloyd, III

A. I don't know, but he came up and asked me, and I described that gun to him.

Q. Now, on the 25th of August, where were you around twelve o'clock?

A. I was at my home down in Richmond, Virginia.

Q. Who was with you?

A. My wife.

Q. What time did you leave your home that day?

A. I left my home and came up here around 12:30 or 1:00 o'clock. I got a call about what had happened. I left immediately to come up here.

Q. Who called you?

A. I got a call from either Dr. Pierce or Major Koehl. I am not sure which one it was, but I am almost certain it was Dr. Pierce.

Q. Did you come right straight to Arlington?

A. Yes, sir. No, I didn't come right straight to Arlington; I went and picked up Dr. Pierce in Fred-

page 1847 } ericksburg and then came straight to Arlington.
Q. Was anybody with you when you picked up Pierce?

A. Yes, sir, my wife was with me.

Q. Now, when was the last time you were up to Arlington prior to August 25th?

A. I was in Arlington in a meeting in June of this year.

Q. When in June?

A. June 8th, 9th, 10th. That was when it was, 8th, 9th, and 10th.

Q. Are you sure of that?

A. Within a day either way, I am sure of it.

Q. Were you thrown out of the Nazi Party?

A. No, sir, I was dismissed from the full-time membership of the organization by mutual consent when I got married. I was never thrown out of the party at all. I left full-time status and I always maintained my party membership.

Q. You got a dishonorable discharge, didn't you?

A. No, sir.

Q. Didn't they send you a dishonorable discharge?

A. No, sir. I got a handwritten letter from Alan Welsh telling me that since I couldn't come back up to
page 1848 } Arlington full-time that I would have to leave
the full-time status of the Party. I never got anything from Peggy Niles.

Q. When did you leave the Party?

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Mr. Hassan: If Your Honor please, he just answered that, just a moment ago.

Mr. Harrigan: You didn't give me the time and the date.

Mr. Hassan: He said he never left it. He said he continued his membership, but not at full-time status.

The Court: That was my understanding.

By Mr. Harrigan:

Q. When did you start this part-time status that you are talking about?

A. I left my full-time status with the Party in January of 1966, either January or late December, around that general time.

Q. Are you back as a full-time member?

A. Yes, sir, I still have business in Richmond.

Q. You are now living at Nazi headquarters?

A. Yes, sir.

Q. You say you don't have any rank now?

A. No, sir.

Q. Now, you are a very good friend of Dr. page 1849 } Pierce, aren't you?

A. Yes, sir.

Q. And you consider yourself a good friend of Matt Koehl?

A. Yes, sir, I'd say we are fairly good friends.

Q. Now, you and Dr. Pierce and Matt Koehl for all practical purposes run that Party, don't you?

A. I wouldn't say that, no.

Q. Who does, if you three don't?

A. Major Koehl.

Mr. Hassan: I am going to object, Your Honor. I don't think who does makes any difference. I object to going into a general inquiry of the present situation of the Nazi Party.

The Court: What is the purpose of this, Mr. Harrigan?

Mr. Harrigan: The purpose is to show that Matt Koehl and Pierce and Lloyd now for all practical purposes run the Party. He was out of the Party and hadn't been in it before Rockwell was killed, and we will tie it up with Pierce and his part in this later on.

Mr. Hassan: If Your Honor please, there's been no testimony, he's been out of the Party at all.

page 1850 } Mr. Harrigan: We have got testimony.

The Court: To show a relationship of the witness I think is proper. Go ahead.

Robert A. Lloyd, III

Mr. Hassan: I am going to ask that his remarks about him being out of the Party be stricken.

The Court: The objection is sustained as to that. He didn't testify that he was out of the Party.

By Mr. Harrigan:

Q. Are you the deputy commander now?

A. No, sir, there is no deputy commander. I have been named the executive officer of this particular headquarters here.

Q. Who is second in command up there now?

A. There is no second in command in rank now. I am Major Koehl's assistant at this point, but I don't have any rank.

Mr. Harrigan: That is all.

The Court: Mr. Hassan?

REDIRECT EXAMINATION

By Mr. Hassan:

Q. When you say you picked up Dr. Pierce, did Dr. Pierce ride up with you or did he come up in his own car?

A. He rode up with me.

page 1851 } Q. That was from where?

A. From his home in Fredericksburg.

Q. By virtue of this school recommended psychiatric treatment, did you lose any time at school?

A. I was out of school for several days, but I didn't lose any credit.

Q. You graduated on schedule?

A. Yes, sir.

Q. While you were at this Tucker Hospital, what was done in regard to you?

A. The doctor just came by and talked to me a couple of times. Dr. Shields.

Q. Were you given any kind of tests?

A. Not while I was in the hospital.

Q. Were you given any kind of treatment?

A. No, sir.

Q. No further questions.

Robert A. Lloyd, III

RE CROSS EXAMINATION

By Mr. Harrigan:

Q. Let me ask you a couple of other questions.

The Court: This is on the point of redirect?

Mr. Harrigan: It is on the treatment.

The Court: Go ahead.

page 1852 } By Mr. Harrigan:

Q. Did they give you medication?

A. Yes, sir.

Q. What type?

A. I don't know. I think they gave me—I know they gave me something to make me sleep the first day or two, but I don't know what it was.

Q. Didn't you take pep pills and dope pills?

A. No, sir.

Q. Do you deny that?

Mr. Hassan: He did deny it, Your Honor. He said no, sir. That is a denial in any language.

The Court: That is quite right.

Mr. Hassan: Will you please not answer? I have objected to the question.

Mr. Harrigan: All right, I am satisfied then.

The Court: May the witness be excused?

Mr. Hassan: As far as I am concerned, he may be excused.

The Court: Does the defense want him again?

Mr. Morris: Your Honor, we may want to recall him, so if the Court will please separate him from the other Nazis back there.

page 1852-A } Mr. Hassan: They are all living together.

The Court: I will give him the same instructions I gave him before, but I can't physically separate them.

Mr. Morris: No, sir, just during the course of the courtroom procedures.

The Court: All right, Mr. Lloyd, you are excused. There is a possibility that the defense may call you as a witness at some later point in the trial, so I will again instruct you not to discuss your testimony with any other person other than counsel until this trial is concluded. You are excused.

The Witness: Can I go home for the day now?

Robert Lee Pace

The Court: Yes, sir.

(Witness excused)

Mr. Hassan: Do you want to start another witness now, Your Honor?

The Court: Who?

Mr. Hassan: Pace. It will be as long as this one.

The Court: Would the direct be as long as this one?

Mr. Hassan: Just about the same.

The Court: Let's take a recess now, and then that will be the only recess we'll take. I'd like to keep going page 1853 } this afternoon quite some time, if you will all do it.

Mr. Hassan: I am willing to do it, except I think the air is dead in here, and I have been watching some of the jury. I wouldn't say which ones, and I think they will agree.

The Court: We will take a short recess.

(Whereupon, a short recess was taken.)

The Court: Call the jury.

Mr. Hassan: Robert Pace.

Whereupon, ROBERT LEE PACE, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. My name is Bobby Lee Pace, my address is 1406 North Fredonia, MacHodocious, Texas.

Q. Did there come a time when you became a full-time active member of the American Nazi Party?

A. Yes, there was.

page 1853-A } Q. When was that, sir?

A. I came to Arlington, Virginia, to become an active member of the American Nazi Party, on the 26th of February, 1965.

Q. Did there come a time when you knew the defendant, John Patler?

A. Yes, there was.

Robert Lee Pace

Q. When was that, sir?

A. During the period of time that I was in Arlington, Virginia.

Q. When you were in Arlington, where did you perform your duties for the Nazi Party?

A. I performed them in many places, while I was here in Arlington, it was both at the headquarters building at 928 North Randolph and at our party barracks at 6150 Wilson Boulevard.

Q. During that time, did you serve with John Patler?

A. Yes, I did.

Q. Did there come a time when you went to Spotsylvania?

A. Yes, there was.

Q. Did John Patler go to Spotsylvania at that time?

A. Yes, he did, with me.

Q. Now, during the time from February, 1965, page 1854 } while you were serving with John Patler, when you were living with John Patler, did there come a time when you saw a gun in his possession?

A. Yes, on several occasions.

Q. What kind of gun was it?

A. I have seen on two various occasions, two different guns, one being a shotgun and the other being a broom stick Mauser pistol.

Q. A broom stick Mauser pistol?

A. Yes.

Q. Now, sir, where did you see that?

A. Both in his apartment or his room, rather, at the headquarters building at 928 North Randolph and at the camp at Spotsylvania, Virginia.

Q. When did you go to Spotsylvania, Virginia?

A. It was shortly after the raid on our headquarters by the Internal Revenue, it was close to the—during the period of New Years, late December, January, and February of 1966.

Q. Now, sir, I will show you Commonwealth's Exhibit No. 44A and ask you, sir, whether or not you can recognize this exhibit?

A. May I pick this weapon up?

page 1855 } Q. Yes, sir.

A. This appears to be the type that he had in his possession.

Q. Is that what you call a broom stick Mauser?

Robert Lee Pace

A. Yes, that is the type of weapon I consider a broom stick Mauser pistol.

Q. Why do you call it a broom stick Mauser?

A. Because of the way the handle is fixed, it looks like a broom stick.

Q. Is this the type of weapon that you saw at 928 North Randolph Street and at Spotsylvania?

A. Yes, sir, it is.

Q. Now, when you went to Spotsylvania, did you and John Patler go together?

A. Yes, we did.

Q. Did your personal belongings go with you?

A. Yes, sir.

Q. Did there come a time when you jointly separated your personal belongings in Spotsylvania?

A. Yes, sir, there was.

Q. Did you see this weapon at that time?

A. Yes, sir.

Q. Where was that weapon placed, do you re-
page 1856 } call?

A. It was placed in Mr. Patler's room, in a bureau.

Q. Was there any comment made by Mr. Patler at that time, concerning the weapon?

A. No comment at that time.

Q. Did you say something?

A. There was no comment at that time about the weapon.

Q. Did there come a time when you had occasion to see Commonwealth's Exhibit No. 43? Please examine that and tell us whether or not you have seen that before and please just answer yes or no.

A. Yes, I am familiar with this article, it is a raincoat that has been worn by Mr. Patler many times.

Q. How many times do you believe you saw him wearing it?

A. As many as twenty times.

Q. Do you recall which side of the coat he wore out?

A. He usually wore the—well, he varied it on different occasions.

Q. He varied it?

A. Yes, sir.

Q. Have you seen him wear it with both sides out at one time or another?

A. Yes, I have.

Robert Lee Pace

page 1857 } Q. Did there come a time when you left Spotsylvania?

A. Yes, there was.

Q. When did you leave Spotsylvania?

A. Roughly, the last of February, 1966.

Q. Where did you go, then?

A. I went to Arlington, Virginia, and returned here.

Q. Did there come a time when you left the Nazi Party in Arlington, Virginia?

A. Yes, I did, it was on the 10th of May, 1966, I returned home.

Q. Did you retain membership in the Nazi Party?

A. Yes, I did.

Q. Are you still a member of the Nazi Party?

A. Yes, I am.

Q. What has been your occupation since the 10th of May, 1966?

A. From the 10th of May until the 30th of June, 1966, I was employed as a waiter at the restaurant in my home town, on the 30th of June, I was inducted into the United States Armed Forces, in which I am now serving.

Q. Did there come a time when you went overseas?

A. Yes, there was.

Q. Where did you perform your duties, sir?

page 1858 } A. I performed my duties in Ollivay and Orleans, France, Osburg and Munich, Germany.

Q. When did you return to the United States?

A. The 28th of November, 1967.

Q. Are you on leave at this time?

A. Yes, sir, I am.

Q. When is your leave terminated, sir?

A. The 18th of this month.

Q. I have no further questions of this witness, Your Honor.

CROSS-EXAMINATION

By Mr. Harrigan:

Q. Do you say you returned to the United States November 28th, 1967?

A. Yes, sir, that is correct.

Q. Now, when was your tour up over there?

A. My tour was up on the 9th of October, 1968.

Q. You came back early for some reason?

A. Yes, sir, I did.

Robert Lee Pace

Q. You came back because the Army sent you back, and they are going to throw you out of the Army, isn't that right?

A. No, sir, that is not correct.

page 1859 } Q. Did the army send you back?

A. Yes, sir, that is correct.

Q. Was it because of your activities over there that they sent you back?

A. No, sir.

Q. You say no, sir, that is not it?

The Court: That is what he said.

By Mr. Harrigan:

Q. All right, why did they send you back?

A. Because I had—there was a slight chance that perhaps there might be some embarrassment concerning myself and my membership in the American Nazi Party, and also with the laws of the German Government, my belief contradicted with the laws of the German Government.

Q. With the laws, did you say?

A. Yes, sir.

Q. What laws are you talking about?

A. The laws passed by the German Government, following World War II.

Q. What law is that?

A. Concerning the beliefs and the principles of the National Socialism or a followance of the doctrines of Adolph Hitler.

Q. As a matter of fact, you just had a write
page 1860 } up in the paper, didn't you?

A. There were some articles that appeared about myself.

Q. About your trip back from Germany?

A. Yes.

Q. What conduct were you engaged in over there that embarrassed the United States and the German Government?

Mr. Hassan: If Your Honor please, I am going to object, there's been no indication that he can substantiate any embarrassment to the United States.

Mr. Harrigan: That's what he said.

Mr. Hassan: No, he didn't, he said the possibility.

The Court: He said there was a possibility that some embarrassment might arise from his beliefs.

Robert Lee Pace

By Mr. Harrigan:

Q. There were more than beliefs involved, weren't there, wasn't there certain conduct?

A. My conduct as a military soldier has never been questioned.

Q. I didn't ask you that, I said wasn't there certain conduct other than belief, that was involved in sending you back from Germany?

A. I would have to ask for a further definition of conduct.

Q. In other words, you don't want to answer page 1861 } the question?

Mr. Hassan: That isn't what he said, Your Honor, at all.

The Court: Objection sustained.

Mr. Harrigan: What was your job in the Army?

The Witness: I am a medic, medical corpsman, I have worked in hospitals, dispensaries, and my last assignment was with the 24th Medical Battalion.

Mr. Harrigan: Did you ever steal any medical supplies and send them to your friends?

Mr. Hassan: I am going to object, Your Honor, unless he is going to have proof.

Mr. Harrigan: I've got it.

The Court: Let me see you gentlemen at the bench.

* * * * *

Conf.

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The Court: Are you going to discredit this witness? If he's been guilty of a crime, you're going to have to make some proffer to know what evidence you are going to have on it. In other words, I am not going to let you jump in and ask what would be insulting questions to a person who is innocent of a crime.

Mr. Harrigan: I merely asked him whether he stole medical supplies and sent them back to any friends.

Conf. Mr. Hassan: Let's have some proof.

12/8/67 Mr. Harrigan: We intend to prove that.

page 9 } Mr. Hassan: I just told you. Let's have your proof here.

Robert Lee Pace

Mr. Harrigan: The proof is here.

Mr. Hassan: I am going to object to that, Your Honor, unless there is some documentary proof of a conviction. Mere accusation is insufficient and he's said he is not under any military charges.

The Court: I don't think he has said whether or not he is under any military charges. I think you may ask him that, but to ask him whether or not he did a thing like that is to infringe on the privilege of self-incrimination.

Mr. Harrigan: Suppose he admits it. I mean larceny is larceny.

The Court: If he has been convicted, it may go into evidence. You can ask him if he's been convicted. I wouldn't let you go so far as to ask him if there are any military charges against him, but just to ask him if he stole something, I wouldn't let you do that. You may show it through other evidence.

Mr. Harrigan: All right, Your Honor.

* * * * *

The Court: The objection to the last question is sustained.

By Mr. Harrigan:

Q. Mr. Pace, where are you stationed now?

A. Right now, I am on leave, my next duty assignment is at Fort Polk, Louisiana.

Q. When did you first join the American Nazi
page 1862 } Party?

A. On my 18th birthday.

Q. How old are you now?

A. I am twenty-one.

Q. While you are up here to testify for this trial, where have you been staying?

A. I have been staying at my home.

Q. Where's that?

A. You mean while I have been here in Arlington?

Q. Yes, you haven't been commuting from Texas, have you?

A. I came from Texas to appear for this trial, yes.

Q. The question was while you were up here in Arlington, where have you been staying?

A. 6150 Wilson Boulevard.

Q. What is that?

A. That is the American Nazi Party barracks.

Robert Lee Pace

Q. Have you discussed the case with anybody up there?

A. No, I haven't.

Q. Has it come up in any conversations?

A. No, other than the reading of the average daily newspaper coverage.

Q. You mean all of you people up there are down here to testify from day to day, and nothing has ever been mentioned?

page 1863 } Mr. Hassan: If Your Honor please, he hasn't established this man is here from day to day, he's just giving an impression.

The Court: The objection is overruled.

Mr. Harrigan: Answer the other question.

Mr. Hassan: I think he should be allowed to answer that one, read back the last question please.

"Question: You mean all of you people up there are down here to testify from day to day, and nothing has ever been mentioned?"

The Witness: No, I have not discussed the case with no one.

Mr. Harrigan: Are you aware that the American Nazi Party is trying to get Patler?

Mr. Hassan: Objection, Your Honor, this is merely an assertion of counsel.

Mr. Harrigan: It is pretty obvious, there have been threats to kill him and no body else.

Mr. Hassan: You must have made them, you are the only one that I know about that has said anything in this Courtroom.

The Court: The objection is sustained.

By Mr. Harrigan:

page 1864 } Q. Now, when did you arrive up there at the headquarters?

A. I arrived at 6:30 or between 7:30 and 8:00 o'clock last night.

Q. Who was up there?

A. Donald Parsons, Matt Koehl, Christopher Vidnjevich, and Spencer Redfield.

Q. Did you have any discussion with Vidnjevich?

A. No, sir, I didn't.

Q. Were you up there all night, or did you go out somewhere?

A. No, sir, I spent the night there.

Robert Lee Pace

Q. Now you looked at what you call a broom stick Mauser and you said that you recognized that, is that right?

A. Yes, sir, I did.

Q. Just what is so special about this gun that you recognize it from any other broom stick Mauser?

A. I noticed the wear on the handle, the corrosion, and also in actuality, there aren't that many guns of that type floating around.

Q. Is that right?

A. Yes, sir.

Q. So the wear on the handle, right?

page 1865 } A. I mean by the lightness of the handle, yes, and the type of corrosion on it.

Q. Which spots are you referring to?

A. This one here (indicating), the corrosion on the barrel, these I have noticed before.

Q. Did you know you were coming down here to identify a Mauser?

A. No, I did not.

Q. You didn't, are you telling me the police haven't talked to you?

A. Yes, the police have.

Q. What did they ask you?

A. Just—they held an interview with myself and asked me questions concerning my association with Mr. Patler, and just, well, roughly the same questions that have been asked here in this Courtroom.

Q. I just asked you if they asked you if you could identify a Mauser.

A. Yes.

Q. What is your answer?

A. They did not say a Mauser, they asked me if I could identify any weapons that I had ever seen in Mr. Patler's possession, they did not identify any type of
page 1866 } weapon.

Q. Of course, the Nazi people didn't tell you what kind of gun it was, did they?

A. No, sir.

Q. You didn't read anything in the paper about it, did you?

A. In that respect, I did read some coverage on the assassination.

Q. As a good Nazi, you would be interested in that, wouldn't you?

A. I would say so, yes.

Robert Lee Pace

Q. Who is the policeman you talked to?

A. Mr. Light, Officer Light.

Q. Officer Light?

A. I believe so, yes.

Q. Was he in a uniform?

A. No.

Q. When did he talk to you?

A. It was on the 30th of November, it was the last week of November, one day I was here in Washington on my way home, I believe it was the 29th, if I remember, yes, sir.

Q. Did he contact you or did you contact him?

A. He contacted me.

Q. Now then, apparently, you were already
page 1867 } up there?

A. Yes, sir, I had stopped by on my way home.

Q. You stopped by where?

A. At 3150 Wilson Boulevard.

Q. Nazi Headquarters?

A. Right.

Q. Did you discuss anything about the case then?

A. With no one except Officer Light.

Q. Are you telling me that you haven't talked to somebody—

Mr. Hassan: Your Honor, please, he just told him.

Mr. Harrigan: That is the most absurd thing I ever heard.

Mr. Hassan: Your Honor, I object to Mr. Harrigan's comments.

The Court: The jury will disregard counsel's comments.

By Mr. Harrigan:

Q. All right, now you looked at a coat, did you say you identified this?

A. Yes, sir, I did.

Q. Just what is so unique about this coat from other coats just like it?

A. There's nothing actually unique in that
page 1868 } respect, the wear of a coat, a person becomes accustomed to, such as perhaps an old coat that you or myself might possess. I have seen this coat on numerous occasions, so I became familiar with it almost in the respect as if it were my own.

Q. Are you sure it isn't?

Robert Lee Pace

A. No, it isn't.

Q. Does it fit you, what kind of coat do you wear?

A. (indicating) I take a small.

Q. What size?

A. Forty-two.

Q. You don't know, is that what you're telling me?

Mr. Hassan: He just said forty-two.

By Mr. Harrigan:

Q. You said that you left Spotsylvania when?

A. Late February, early March.

Q. What year?

A. 1966.

Q. How long were you down there?

A. I was down there approximately two months and a few days over two months.

Q. Were you ordered back to Arlington by somebody?

A. I wasn't ordered, it was requested that I come back up here, yes, I was.

page 1869 { Q. Back up to here meaning where?

A. Meaning here in Arlington to American Nazi Party barracks.

Q. Why were you requested to come back, do you know?

A. There was some business that I could attend to up here, I believe it had to do with clerical work.

Q. You were sent back, right?

A. Yes.

Q. So it wasn't a request then at all, you were just told to get out of there, weren't you?

A. No, actually, my job down there had been completed and I came back.

Q. You say you went down to Spotsylvania with Patler, right?

A. Yes.

Q. That you also testified that both of you took your belongings down at the same time, is that right?

A. Our belongings actually came in several different shipments.

Q. So you didn't take them down at the same time, they came down later?

A. Some of them were brought down together.

Q. What is this stuff about you stood there

Robert Lee Pace

page 1870 } and watched everybody unpack, what was that
all about?

Mr. Hassan: He didn't say he watched everybody unpack,
he said he and Patler unpacked theirs together.

The Court: That is my recollection of what he said.

By Mr. Harrigan:

Q. Your stuff went down at an entirely different time than
when John's went down, isn't that right.

A. Not the majority of it.

Q. Now, you left down there in February or early March
of 1966, is that correct?

A. That's correct.

Q. Did John stay down there?

A. Yes, he did.

Q. Did you have occasion to go back down there after
that?

A. I actually remember—I might have been down there,
but I didn't stay. It was just a short visit.

Q. Did you go down for a short visit?

A. Possibly I did, I can't remember.

Q. So did you see John from any time of March of '66 up
to the present time?

A. From March of 1966 to this date, from
page 1871 } March of 1966 to May 10, while I was here in
Arlington, I saw him on two or three occasions,
yes.

Q. Now, did John have any other coats, to your knowl-
edge?

A. Yes.

Q. What kind?

A. He had, I believe, two sport jackets.

Q. I am talking about top coats.

A. Oh, top coats, not to my knowledge, no.

Q. Now, did you ever see John in a black rain coat?

A. You mean cloth rain coat?

Q. Standard rain coat, like everybody else in town wears,
black, London Fog type of rain coat.

A. Yes, I have.

Q. Did you ever see him in a brown coat?

A. I'm afraid that doesn't register with me, no, I don't
believe I have.

Q. But, you said you saw sport jackets?

Robert Lee Pace

A. I have seen some of his clothes, I haven't seen all of his personal effects, no.

Q. Now this sport jacket you saw, what color was that?

A. It was a corduroy, an olive green.

Q. Did you ever see him in this coat?

page 1872 } A. I have seen one like it, I don't know if that
is the exact same coat.

Q. You ought to be able to tell, you could tell his rain coat was the same.

Mr. Hassan: Argumentative, Your Honor.
The Court: Overruled.

By Mr. Harrigan:

Q. Did you ever see him in that coat?

A. I have seen one like it, the colors appear to be the same.

Q. What?

A. The colors appear to be the same, it could very possibly be the one that he had before.

Q. Now, did you have any disagreements with John at Spotsylvania?

A. You mean major or minor?

Q. Apparently, you had some.

A. Yes.

Q. Is that right?

A. Yes.

Q. What did you term them, major or minor?

A. Minor.

Q. Minor?

page 1873 } A. Yes, sir.

Q. Is there any animosity between you and John?

A. No, not during our period of relationship, there was not, he was my superior, I followed his orders.

Q. All right, you say not during your period of relationship, do you have any animosity toward him now?

A. No.

Q. You hesitated.

A. No, I drew in a breath, I said no.

Q. Did you ever see this hat before?

A. No, I have not.

Q. Have you ever seen John Patler wearing a hat?

A. Yes.

Q. When?

Robert Lee Pace

A. During different speeches and rallies, pickets.

Q. What kind of hat was that?

A. A flat-top, ridge-way hat, dyed brown, the type that is part of the uniform of a stormtrooper.

Q. Describe that hat again.

A. Flat-topped, ridge-way.

Q. That is all.

REDIRECT EXAMINATION

By Mr. Hassan:

page 1874 } Q. When Detective Light talked to you, or at any time, when you were here or on your way home, did anyone show you that gun?

A. No, sir, they did not.

Q. From the time that you left Spotsylvania until today, had you ever seen that gun before today on the stand?

A. I have only seen one small, minute picture in a military newspaper.

Q. Did there come a time when you talked to Detective Light, that you made a drawing of the gun that you had seen, and signed it and gave it to Detective Light?

A. Yes, sir, there was.

Q. I'd like to show you this, sir, and ask you whether or not, this is it?

A. Yes, sir, it is it.

Q. I'd like to have this marked as Commonwealth's Exhibit No. 56 for identification.

(The drawing previously referred to was marked Commonwealth's Exhibit No. 56 for identification.)

I would like to offer this into evidence, Your Honor.

Mr. Harrigan: I object on the ground that Mr. Hassan is trying to corroborate his own witness.

page 1875 } The Court: I think it is proper to conduct a rehabilitation, redirect after a cross-examination which attacks the veracity of the testimony, so I will permit it and I have a question or two.

Mr. Pace, is that your signature on there?

The Witness: Yes, it is.

The Court: And the time and date, did you put that on there?

Robert Lee Pace

The Witness: Yes, I did, by my own hand.

The Court: Is that time and date the time and date when you make the sketch?

The Witness: Yes, it is, that is also the date when I was interviewed by Mr. Light.

The Court: The objection is overruled, it will be received in evidence, marked Commonwealth's 56.

(The drawing previously identified as Commonwealth's Exhibit No. 56, was received in evidence.)

Mr. Harrigan: Exception on the grounds stated.

By Mr. Hassan:

Q. Did you read the newspaper story to which Mr. Harrigan referred?

page 1876 } A. The articles?

Q. The articles in the paper?

A. Yes, sir, I did.

Q. As a matter of fact, didn't your commanding officer say that he'd like to have a battalion of soldiers like you?

A. Yes, sir, he did.

Mr. Harrigan: I object to that.

The Court: The objection is sustained, it is hearsay.

Mr. Hassan: I'd like to take an exception on the grounds that the press is not given reasonable respect.

The Court: May the witness be excused?

Mr. Hassan: He may be excused.

Mr. Harrigan: I am not through.

RECROSS-EXAMINATION

By Mr. Harrigan:

Q. Anybody who would want an army of officers like him would have to be in the Nazi Party.

I believe there is one very important detail which is obvious on this gun and that is this little round ring.

A. It is not so obvious, most military pistols have them.

Q. Why didn't you draw it in the picture?

page 1877 } A. I told Detective Light at the time this was only a rough sketch, if he wanted a better one I could do it, but he said this is sufficient.

Q. How do you load the military pistol, do you know that?

Christopher Vidnjevich

A. You load it by various, different means.

Q. Just tell me how you put the bullets in.

A. You usually put them in by placing them in a clip.

Q. Where do you put the clip?

A. In most military pistols, you load it underneath into the stock, as with American and various other nationalities, some of the older models, they are fed from a stripper clip through the top, they are placed into a box magazine contained within any weapon, itself, others are fed by a small box magazine which is fitted just forward of the trigger.

Q. So you knew the general appearance of what a 7.63 would look like?

A. Yes, somewhat, I am fairly familiar with weapons, being in the military.

Q. So you could draw one from your own memory, independently of ever having seen one?

A. Perhaps, this type pistol, I have only seen a few.

Q. Did you read books on guns?

page 1878 } A. A few, yes, technical manuals, I was given several hours training on weapons and in basic training.

Q. That is all.

The Court: All right, sir, may the witness be excused, do you need him any further?

Mr. Hassan: I do not.

The Court: Does the defense need him?

Mr. Harrigan: No, I do not need him.

The Court: All right, you are excused and free to go.

(Witness excused.)

Mr. Hassan: Mr. Vidnjevich.

Whereupon, CHRISTOPHER VIDNJEVICH, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and spell it.

Christopher Vidnjevich

A. Christopher Vidnjevich, V-i-d-n-j-e-v-i-c-h.

Q. And your address, sir?

A. 1314 West Ohio Street, Chicago, Illinois.

page 1879 } Q. Now, sir, did there come a time when you
became a member of the American Nazi Party?

A. Yes, sir.

Q. Did there come a time when, in that party, you had
some associations with John Patler?

A. Yes, sir.

Q. When did that start, sir?

A. On the very close basis, it was last summer, not the
summer past, the one before, the summer of '65, in August.

Q. Where were those associations?

A. In Chicago.

Q. How long was Mr. Patler in Chicago?

A. Oh roughly, three months, he came and left, he was
there for quite a bit of time.

Q. During this period of time, did you work together?

A. Yes, sir, we did.

Q. Now, did there come a time when Mr. Patler was there
when George Lincoln Rockwell had a debate with Stokley
Carmichael?

A. Yes, sir.

Q. When was that?

A. That was in July of '65.

Q. In July of '65?

page 1880 } A. Yes, sir.

Q. Was John Patler there?

A. I am not sure, I thought I was sure, but I checked back
on my dates and I can't say I am positively sure of that.

Q. You are not positively sure of that?

A. No, sir.

Q. What were you and John Patler doing when he was in
Chicago?

A. We held a rally out in Market Park, a white power rally.

Q. Did there come a time when you had an association with
John Patler in Virginia?

A. Yes, sir.

Q. When was that?

A. That was June of this year.

Q. Was John Patler in the American Nazi Party in June
of this year?

A. No, sir, he had been expelled.

Q. Were you familiar with the details of his expulsion?

Christopher Vidnerich

A. Yes, I was.

Q. Now, what was your association with him in June of 1967?

page 1881 } A. We held a national conference here in Arlington, Virginia, all the party officers were present and I talked with Commander Rockwell, and he asked me to go see John Patler and see if we could get him to join the party, if he would amend his ways.

Well, I went, I saw John Patler three times during that period, this started—I believe the first time was on June the 8th or thereabouts. The three times I did see him were in a period of a week and we discussed the reasons why he was expelled from the party, and he was very bitter about it. On a number of occasions, he got very angry and he shouted at me, "Rockwell is an evil genius and he must be stopped," and after hearing this quite a few times from him, I said, "Well, it sounds like you are back in your old gang in New York," and he said, "That's right," he says, "We're going to stop him," and well, he just told me that. We would get to talking about the reasons why he was expelled from the party and he just would get real mad and boiling and keep blurting out one particular phrase, "Rockwell is an evil genius and he must be stopped."

Q. When did he make these statements, which one of the times that you saw him?

A. On all these occasions.

page 1882 } Q. Now, let's direct yourself to the first occasion, where did he make those statements?

A. He picked me up at the bottom of a hill in a Mustang, I believe it was a light colored Mustang, that was at the shopping center across from our barracks.

Q. Who was with him at that time?

A. Well, the first time he was—he came alone.

Q. Was he driving?

A. Yes, he was.

Q. Where did you go?

A. We went to, I believe the first night we just drove around and stopped for coffee, and then he drove me back, and of course, we were talking all this time.

Q. When was the second occasion?

A. The second occasion he picked me up at the same place, at the bottom of the hill there, and his wife and kid were present at that time.

Q. Where did you go then?

Christopher Vidnjevic

A. We went—we were talking all the time in the car, and went to a restaurant again, and had coffee, and then we walked all the way back, and his wife picked him up somewhere at the bottom of the hill there by the party headquarters.

Q. Can you pinpoint these in a matter of page 1883 } time?

A. Yes, they were usually after 10:00 in the evening.

Q. As to date, can you pinpoint them?

A. The conference began on the 8th, and I believe the first time I saw John Patler was the night before the conference which was on a—I am not actually sure of the date, but I definitely did see him three times, but it was so long ago, I just can't remember the exact dates.

Q. What dates were the conference?

A. The conference was between the 8th and the 11th of June.

Q. These three times were related to that particular conference?

A. Yes.

Q. How long did you stay in Arlington?

A. Oh, well, I left about two days after the conference.

Q. So, when did you arrive, with relationship to the conference?

A. I think two days before the conference.

Q. So then, it was in a period of two days before the 8th and two days after the 11th that you were talking to him?

A. Yes, sir.

Q. What was the third occasion that you had to talk to him?

page 1884 } A. The third occasion he picked me up with a fellow by the name of Chris Bailey and his wife and Chris Bailey's girlfriend, a girl by the name of Janet Ball, and we went to a place in Washington, D. C., called—I can't remember the name, but it was a night spot.

Q. Where was it located?

A. In Washington, D. C.

Q. Was it a street-level, or upstairs, or downstairs?

A. It was on the second floor.

Q. Do you remember what street it was located on the second floor?

A. No, I don't.

Q. Was it on a corner?

Christopher Vidnjevic

A. Yes, sir, it was.

Q. Would it refresh your recollection if I said Casino Royal?

A. Yes, sir, that was it, that is definitely it.

Q. Now, these remarks that you have attributed to Mr. Patler, were they made on all occasions when other people were present?

A. Yes, sir, they definitely were.

Q. Were they made at the Casino Royal?

A. Yes, sir, they were.

page 1885 } Q. Now, sir, do you have any knowledge of the beginning of this bitterness and the cause of this bitterness that you discussed with John Patler?

A. Well, the major part of the bitterness arose from the fact that he had been expelled from the party.

Mr. Harrigan: Your Honor, that is pure speculation on his part and he is editorializing his comments and I object to it.

The Court: You will have an opportunity to go into it on cross-examination, but there's nothing inadmissible about it, the objection is overruled.

The Witness: John Patler told me that he would, in effect—he told me he had gotten a raw deal and that he said—well, he said that he was very mad with us and he acted very mad and he made a lot of statements like—well, the few things he said took me by surprise, "Castro was a revolution for the true working man and Rockwell had no right and had no business calling him 'nigger'."

By Mr. Hassan:

Q. Now, did there come a time when he discussed with you the formation of a party?

A. Well, he mentioned during this period that he had organized a white power committee, as he called page 1886 } it, and that was all that he had mentioned.

Q. When John Patler was with you in Chicago, sir, was there any discussion by Patler with you, of any animosity toward the American Nazi Party or George Lincoln Rockwell?

A. At that time, no, sir.

Q. Did you know John Patler prior to the time you went to Chicago?

A. I knew of him, but I never really had known him close.

Christopher Vidnjerich

Q. Had you ever met him before then?

A. I don't think so.

Q. When did you first join the Nazi Party?

A. I joined the Nazi Party in 1961.

Q. Was John Patler a member of it then?

A. At that time he was.

Q. Did there come a time when he ceased to be a member of it?

A. Yes, sir, not too long after I joined, I can't possibly remember the date he quit, and a year or two later he rejoined.

Q. Now, do you have any knowledge of why he quit when he first joined?

A. No, sir, I do not.

page 1887 } Q. Did you have any troubles with him?

A. No, sir, never did.

Q. Did you have any trouble with him in Chicago?

A. No, sir, we were the best of friends.

Q. Before George Lincoln Rockwell asked you to meet with Patler, were you aware of the difficulties that had prompted his discharge from the party?

A. Yes, sir, I was.

Q. Did there come a time when there was any action by the officials of the American Nazi Party in connection with John Patler, in which you participated?

A. No, sir, not in which I participated.

Q. Were you present when any action was taken?

A. No, sir, I was not.

Q. Were you informed by any official publication?

A. Yes, sir, I was.

Q. What was that publication?

A. I received a letter from the Commander, stating—

Mr. Harrigan: Your Honor, I object to all of this, it is fourteen-hand information.

The Court: I gather that you are asking for the nature of communication to be received, if so, it would be hearsay, the objection would be sustained unless you have page 1888 } some other reason for it.

Mr. Hassan: I think, Your Honor, if he has a letter direct from the Commander of the organization, which officially explains a situation to him, it is not hearsay, what he has been told officially by the American Nazi Party.

The Court: What exception to the hearsay rule would that be?

Christopher Vidnjeovich

Mr. Hassan: That is normal business of this organization.

The Court: Objection sustained.

Mr. Hassan: I would like to take an exception to that, Your Honor, and at this time I have no further questions.

I would like to recall this man after the business records have been entered.

CROSS-EXAMINATION

By Mr. Harrigan:

Q. Now, was Erika Himmler with you at the Casino Royal?

A. No, she was not.

Q. Who was Erika Himmler?

A. She is my fiancée, we are engaged.

Q. Is that her name, Erika Himmler, or is that—

A. Barbara Warren is her real name, she uses the other name for party activity.

page 1889 } Q. You say you are engaged.

The Court: Excuse me, I didn't get the first answer, was she present at the Casino Royal?

The Witness: No, sir, she was not.

By Mr. Harrigan:

Q. You are engaged?

A. Yes, sir.

Q. Where do you live in Chicago?

A. 1314 West Ohio Street.

Q. Is that the headquarters of some sort?

A. Yes, sir, we have headquarters there plus four apartments.

Q. Headquarters meaning another Nazi Party headquarters, is that right?

A. Well, the first floor is the headquarters and the second and third floors are apartments.

Q. Who lives there with you?

A. Well, myself and Catalano share an apartment on the third floor, John Mediser in the stormtrooper, he rents an apartment from us on the second floor front, and Miss Warren lives on the third floor front.

Q. Does Barbara live there?

A. Yes, sir, she does.

page 1890 } Q. She lives with you there, isn't that right?

A. She lives there.

Q. Don't you have two children by Barbara?

Christopher Vidnjevic

A. No, sir.

Q. What are you raising your eyebrows for, do you or don't you?

A. No, sir, I do not.

Mr. Hassan: I think this is a highly objectionable technique.

The Court: I was wondering if you were going to object, I don't see what that has to do with his credibility.

By Mr. Harrigan:

Q. How soon after the 25th of August, 1967, were you going down to Arlington, or were you already down there?

A. I am trying to remember, I probably was down here, but I am trying to remember what for.

Q. Do you remember, that was the day Rockwell was shot, does that help you?

A. I came down, I think—I think two or three days after the assassination.

Q. Did you come down here for the purpose of investigating this particular act?

A. No, sir, at that time I came down for the purpose of attending the Commander's funeral.

Q. Did there come a time when you start investigating into that?

A. Yes, sir, I did talk with a few people.

Q. So you were more or less the official Nazi investigator, aren't you?

A. No, sir, I am not.

Q. What people did you talk to?

A. Well, the only person I talked with was a Jacqueline Lynden, I met her in the library.

Q. Did you ever talk to Bob Hunt?

A. I think a Mr. Hunt called me on the telephone the same day or the day after I talked with Miss Lynden, evidently, he followed me to the library.

Q. As a matter of fact, you have been going around threatening people, haven't you?

A. No, sir, I have not.

Q. You threatened my partner right out in the witness room a little while ago, a couple of days ago.

A. I did not, sir.

Q. Did you ever call Hunt and tell him he would never live to see Patler come to trial?

Christopher Vidnjevich

page 1892 } A. Sir, I never did.
Q. Did he then call you back at Nazi Headquarters and that is when you spoke to him and you laughed at him?

Mr. Hassan: I am going to object to all this.

Mr. Harrigan: I am just laying a foundation, we have the proof, Your Honor.

The Court: Objection overruled.

Mr. Hassan: He has got a hired investigator who is referred to as Mr. Hunt, he's probably interviewing him, it is a highly reprehensible technique.

Mr. Harrigan: I will show that this witness not only threatened him, but he threatened him on three different occasions. He actually went and burned the car and slashed the tires over in Alexandria to another witnesses' car.

The Court: You are going to have to establish that, Mr. Harrigan, otherwise it will be stricken.

By Mr. Harrigan:

Q. On October 4, 1967, at 10:05 p. m., did you call Mr. Hunt's office?

A. No, sir, I believe on October 4, I was in Chicago.

Q. And on October 4, at 10:30 p. m., didn't he call you at the American Nazi Headquarters and you answered the phone right after?

page 1893 } A. Sir, the only time I talked with Mr. Hunt
was, I believe, the same evening or the next day,
after I spoke with Miss Lynden, and at that
time he said to me, "I heard you are conducting an investigation," and I asked him well, "Where did you hear that from?" At that time I had only told one person that and that was with Miss Jacqueline Lynden, because I had been told to go see her and see if I could find out if she was involved in this thing.

Q. You deny then that you called Hunt—

Mr. Hassan: He has already denied that.

The Witness: I definitely do deny it, I don't know Mr. Hunt, I don't know where his offices are or where he lives or anything about it.

Christopher Vidnjevich

By Mr. Harrigan:

Q. Do you deny that at 10:30, October 4, Mr. Hunt called you at Nazi Headquarters?

A. I don't remember the date, but he did call me once and he said—what he told me was that, "I heard you were conducting an investigation, are you with us or against us?" and at that time I did not know who Mr. Hunt was.

Q. Do you know who Mr. Sheehy is?

A. No, sir, I do not.

Q. You never heard of the name?

A. No, sir.

page 1894 } Q. On October 7, 1967, didn't you again call Mr. Hunt and when he picked up the phone, you asked for Hunt and he said, "Speaking," and you said, "You don't have much longer to live," or "Not for long you're not, you don't have much longer to live"?

A. No, sir, I did not.

Q. You do admit Mr. Hunt talked to you on the phone and he knows your voice, don't you?

A. I spoke with him once for about a minute and a half, that was the day after I saw Miss Lynden at the public library in Arlington.

Q. What day was that?

A. I don't know, I have no idea, I'd have to check and see, I don't remember why I was down in Arlington for that particular occasion, I have to check, maybe I can make some sense out of it, but I completely forgot about him making that telephone call.

Q. Do you know Karl Allen?

A. Yes, sir, I do.

Q. Where does he live?

A. In Alexandria.

Q. Whereabouts?

A. I don't know the exact address.

page 1895 } Q. You know where he lives on King Street, don't you? You have been over there.

A. Yes, sir, I have been over there once.

Q. Did you have occasion to call Karl Allen on December 5, at approximately 7:00 or 8:00 o'clock and talk to him?

A. I did talk with Mr. Allen on the phone, I don't remember if that was the date, I have a terrible time remembering dates.

Q. You do?

A. I did talk with him once, I believe.

Christopher Vidnjevic

Q. You knew Mr. Allen was helping us in our investigation, didn't you?

A. Yes, sir, I did.

Q. Didn't you tell Mr. Allen that you were going to run him out of town?

A. No, sir, I did not.

Q. And told him to "leave town, it's not healthy, move back to Florida"?

A. No, sir, I did not, I called Mr. Allen and I told him there had been a number of rumors running back and forth and he told me the same thing.

Q. What are you talking about?

page 1896 } Mr. Hassan: I would insist that he allow him to complete his answer without interrupting him, Your Honor.

The Court: Had you completed your answer?

The Witness: No, sir, I had not.

The Court: Go ahead.

The Witness: And to stop any friction between our group and their group, that a fellow by the name of J. C. Norgon and a Floyd Fleming and myself and him meet at his bookstore in Alexandria and talk things out so there wouldn't be any more friction between the two groups, just before that I did talk with Mr. Fleming and he agreed to have a meeting.

By Mr. Harrigan:

Q. Are you through?

A. Yes, sir.

Q. Now, then, you did call him on the 5th?

A. I am not sure of the date.

Q. At about 3:00 o'clock in the morning on the 6th, the same night, didn't you go over there and slash the tires of a Cadillac in the driveway by his house, pour gasoline on it, and set fire to it?

A. Absolutely not.

Q. And didn't you at 3:45 that same morning call him up and say, "Hot enough for you?" and laugh like
page 1897 } a maniac?

A. No, sir, I did not, can you tell me was that on a Wednesday, Friday, or what though?

Q. Whatever day you did it and it looks like a Wednesday.

Christopher Vidnjeovich

Mr. Hassan: If Your Honor please, it wasn't whatever day he did it, he denied he did it.

Mr. Harrigan: He did not.

The Court: Objection sustained, he denied it.

Mr. Harrigan: Do you deny calling him back at 3:00 o'clock in the morning and saying "Hot enough for you?"

Mr. Hassan: He already denied that.

The Witness: No, sir, I did not.

By Mr. Harrigan:

Q. Have you ever been examined by a psychiatrist?

A. Yes, sir, I have.

Q. Where?

A. In Chicago, Illinois.

Q. Were you ever examined in any institutional setting?

A. I went to see the psychiatrist one time and that was it, I was declared sane.

Q. Did he make up a report on you?

A. Yes, sir, I was ordered by the Court at that time, myself and four other people who were on trial for a surly conduct charge and we were found sane, all five of us.

page 1898 } Q. Does your mother live in Chicago?

A. Yes, sir, she does.

Q. What is her address?

A. I don't know.

Q. You don't know your own mother's address?

A. I haven't seen her for two years and a year ago she moved, I don't know the address offhand.

Q. What was the address she lived at when you last saw her?

A. Well, the last time I saw her she was living in Elgin, Illinois, and then she moved back to Chicago with my sister and brother-in-law.

Q. Where does your brother-in-law live?

A. Well, the three of them live together, my mother is crippled.

Q. Where?

A. Right now they are living in Chicago.

Q. Where in Chicago?

A. I'm not sure.

Q. Do you know where?

A. No, sir.

Christopher Vidnjevich

The Court: He already said she lived in Chicago.

Mr. Harrigan: He is lying, Your Honor.

page 1899 } Mr. Hassan: Objection, Your Honor.

The Court: Objection sustained.

By Mr. Harrigan:

Q. Have you talked to Bobby Lee Pace?

A. Yes, sir, I have.

Q. When?

A. We talked out in the witness room, we were reading Life Magazine and we were talking about the various articles.

Q. You were talking about the Life Magazine, what about last night, did you see Bobby Lee Pace last night?

A. Yes, sir, I did.

Q. Where?

A. At party headquarters.

Q. Did you have occasion to discuss the case with him at all?

A. No, sir, at that time I was already sworn and I did not discuss the case with him, His Honor told me not to.

Q. That is all.

Mr. Hassan: I have no further questions at this time, Your Honor, I will recall him when the documents are in.

By Mr. Harrigan:

Q. Haven't you, in addition to the threats I've already talked about, threatened Karl Allen, Seth Ryan, and Bernie Davis?

page 1900 } A. No, sir, absolutely not, I haven't seen—I don't think I have ever seen Bernie Davis, I don't even know what he looks like, in the last four years, I have seen Seth Ryan once and that was at the Commander's funeral.

Q. That is all.

The Court: All right, sir, you are excused, but you are subject to recall, so you are again cautioned not to discuss the case until it is over, you may be called later by either the prosecution or the defense, but for the present you are excused and free to go.

The Witness: Thank you, Your Honor.

Matt Koehl

(Witness excused.)

Mr. Hassan: Your Honor, may we have about a five- or ten-minute break before we start the next one?

The Court: All right, sir. Ladies and gentlemen, we will take a five-minute recess.

(Whereupon, a short recess was taken.)

Mr. Hassan: Matt Koehl.

Whereupon, MATT KOEHL, was called as a witness on behalf of the Commonwealth, and having been previously duly sworn, was examined and testified as follows:

page 1901 } DIRECT EXAMINATION

By Mr. Hassan:

Q. Will you please state your name, sir, and your address?

A. Matt Koehl, 6150 Wilson Boulevard, Arlington.

Q. Are you a member of the American Nazi Party?

A. That is correct, sir.

Q. What is your capacity in that party at this time?

A. I am presently head of that party.

Q. Do you have a title?

A. Yes, sir.

Q. What is your title?

A. National Leader of the National Socialist White People's Party.

Q. Is that the successor to the American Nazi Party?

A. That is correct, sir.

Q. Were you a member of the American Nazi Party?

A. That's right, sir.

Q. How long have you been such a member?

A. Since December of 1960, I don't recall the exact date, I believe it was the 7th or the 9th.

Q. Have you been active in Arlington County, principally, since that time?

page 1902 } A. No, sir, I moved to Arlington early in February of 1963.

Q. Have you been since 1963, February?

A. That's right, sir.

Q. I'd like to show you Commonwealth's Exhibit No. 55

Matt Koehl

for identification, sir, and ask you whether or not you know what this is?

A. Yes, I do.

Q. Is that something that you distributed personally?

A. It was distributed by the mails, yes, sir.

Q. Is that something that you drew up?

A. Yes, sir.

Q. Is that your authorized mimeographed signature at the bottom thereof?

A. Yes, sir.

Q. How was this distributed? That is, to whom?

A. It was distributed to the membership of the American Nazi Party.

Q. Does it indicate on there the date when George Lincoln Rockwell had a debate with Stokely Carmichael?

Mr. Harrigan: Objection, Your Honor, I think it is still a hearsay document, if he has some firsthand knowledge, himself, that is something else, but reading the page 1903 { mimeographed statement—

The Court: The question, Mr. Koehl, is just to be answered yes or no, does it state a date on it?

The Witness: Yes, it does, sir.

By Mr. Hassan:

Q. Do you have firsthand knowledge of that item and other items that appeared in that bulletin when you published it?

A. I wasn't present at the event described, but I had information concerning it which I subsequently put into the bulletin.

Q. What was the date of that bulletin?

A. It was August—

Mr. Harrigan: Your Honor, I object to reading from the bulletin. I object to the bulletin altogether. I don't think it adds anything, it is still a hearsay bulletin.

The Court: Mr. Hassan, are you attempting to put this as a recollection refresher?

Mr. Hassan: I intend to offer this into evidence, Your Honor, the bulletin, on the face of it says it is a monthly bulletin, I want him to tell me if it came out as it says.

The Court: I don't know if you are going page 1904 { about it quite right, ask him if he needs it to

Matt Koehl

refresh his recollection, if he does, he can testify from it if it will refresh a knowledge that he had at that time.

Mr. Hassan: If Your Honor please, I am going to do that, but he put it out, he is the one who put the bulletin out.

The Court: It would still be a hearsay document because it is a statement he made out of Court, and he wasn't under oath, he can testify here now, he is under oath, he is the best evidence if he can testify directly.

Mr. Hassan: If Your Honor please, I will ask him but you have made a lot of decisions and published them and I don't think you could remember without refreshing your recollection.

The Court: It's all right to refresh them, if he has notes to refresh his recollection all right.

By Mr. Hassan:

Q. Do you need that refresher bulletin to refresh your recollection?

A. Yes, sir.

Q. How many similar bulletins have been put out?

A. Since the start of 1966.

Q. How frequently?

page 1905 } A. Once a month.

Q. Do you need that to refresh your recollection as to when that bulletin was out?

A. Yes, I do.

Q. Do you need that to refresh your recollection as to the day of the Rockwell. Carmichael debate?

A. Yes, I would, sir.

Q. Do you need that to refresh your recollection as to where the debate took place?

A. Well, that I recall.

Q. Can you tell us where the debate took place and the nature of the media in which the debate was held?

A. It was in Chicago, Illinois, and it was on television.

Q. Do you need that to refresh your recollection?

A. Excuse me, I'm not sure, I would have to check on that, whether it was television or not.

Q. I think I asked that he be allowed to use it for that purpose, Your Honor.

Mr. Harrigan: Your Honor, I don't know what recollection he is refreshing, he said he didn't have any firsthand knowl-

Matt Koehl

edge of the event himself, it is just information to him that he put out in his paper, and he can refresh his recollection from now until the end of time, but he is not going to refresh any independent recollection of the event he is talking about because he has already testified that that came to him through other sources.

The Court: Now, Mr. Koehl, you did not attend the debate you said, did you watch a telecast or have a radio broadcast of it at the time it was made?

The Witness: No, sir, I did not.

The Court: From what source did your information come, concerning that debate?

The Witness: It came from Commander Rockwell, at the time, as a matter of fact, I had something of a discussion as to the exact date, whether it was the date given here or another date because it occurred around midnight, it ran from somewhere around 11:00 or 11:30 on in to the next morning and so I recall, at the time there was a discussion of that date which I had.

Mr. Harrigan: The utterances of Commander Rockwell are certainly not admissible.

The Court: Did you know before this debate took place that it was going to take place? Did you know he was going to go to Chicago to engage in this activity before he did it?

The Witness: I believe he was on some kind of a trip which took him through Chicago and I believe the details were made while he was in Chicago, and whether or not I had any information that he was going to appear prior to his appearing, I can't say honestly at this time.

The Court: So then, you discussed it with him after he returned from that trip?

The Witness: That is correct, sir.

The Court: Can you fix in your mind the time of the trip during which the debate took place?

Mr. Harrigan: Your Honor, I object to the whole line of questioning, he doesn't know whether it even took place, because somebody told him and I think that is the issue, he could discuss it—

Mr. Hassan: There is still one question that hasn't been asked. He said George Lincoln Rockwell told him, one question to ask him, does he have a tape of it?

Mr. Harrigan: I object to that.

Matt Koehl

The Court: I will let him come back to that, but right now, I am trying to establish whether or not he has knowledge of its time, do you have any recollection of the time and duration of the trip that Rockwell took?

The Witness: I believe it was a trip that extended into weeks, I couldn't say definitely.
page 1908 } The Court: Do you know in what year this was?

The Witness: It was last year, 1966.

The Court: All right, Mr. Hassan, go ahead.

By Mr. Hassan:

Q. Do you have a tape recording of this?

A. I don't know, we may have, I couldn't say for sure.

Q. You have never heard one?

A. I have never heard one.

Q. May he use this to refresh his recollection?

Mr. Harrigan: I don't know what recollection he is refreshing, that is my point, what has he got to refresh, he says he doesn't know anything about it, he said somebody told him something.

Mr. Hassan: He didn't say he didn't know anything about it, he said he discussed it with him when he came back.

Mr. Harrigan: I would object, Your Honor.

The Court: It seems to me that what is trying to be established here is the fact of an utterance and to set it in a time context, it isn't as though he were being asked what was said at that debate. He is trying to put it into a time frame and he made a memorandum of it at the time he heard about it and he says he has to consult that memorandum to see when he did that, that tends to put a time
page 1909 } frame around it and I think for that limited purpose, it is all right.

Mr. Hassan: I would like to extend that purpose a little further, if he is allowed to read the entire bulletin, other items which he wrote at the same time may refresh his recollection with more detail.

The Court: He may certainly refer to that to refresh his recollection, but I don't want him to read it into the record.

Mr. Harrigan: Note my exception on the ground that it is pure hearsay.

Matt Koehl

Mr. Hassan: Are you going to allow him to use it, Your Honor?

The Court: Yes, sir, he may refer to that.

Mr. Hassan: Will you read that and tell us whether it does or does not refresh his recollection.

May we approach the bench, Your Honor?

* * * *

Conf.

12/8/67

page 9 }

* * * *

Conf. Mr. Hassan: May it please the Court, Robert
12/8/67 Pace wants to go back to Texas and get an order
page 10 } signed, so he can be paid his fee and asks the
Court to bear with him because he doesn't know
what time he will be back. I just got a note.

Mr. Harrigan: As long as we are here, I might as well make a motion to exclude all this testimony on the grounds that he has no firsthand knowledge of the event, that the event did, in fact, take place. All he has is hearsay knowledge, that it apparently took place through what he says is Commander Rockwell, and our position is that any utterances by Commander Rockwell, other than dying declarations, are not admissible in evidence and they are hearsay. Since they are trying to prove the truth of certain facts, that this debate did take place and to prove that it took place at a certain time, they have to do it by some other method other than hearsay evidence.

The Court: My view of that is that there has already been testimony that the debate took place. The letter, itself, 5G—

Mr. Hassan: I think we should have the defendant present here.

The Court: Mr. Patler, would you come up?

Conf. Mr. Hassan: I didn't think we needed him for
12/8/67 the witness fee. I do think we need him for this.
page 11 } Could Mr. Harrigan repeat his objections so the
whole thing will be in the presence of the defendant.

Mr. Harrigan: I would prefer that it be read back.

Matt Koehl

"Objection: As long as we are here, I might as well make a motion to exclude all this testimony on the grounds that he has no firsthand knowledge of the event, that the event did, in fact, take place. All he has is hearsay knowledge, that it apparently took place through what he says is Commander Rockwell, and our position is that any utterances by Commander Rockwell, other than dying *delcarations*, are not admissible in evidence and they are hearsay. Since they are trying to prove the truth of certain facts, that this debate did take place and to prove that it took place at a certain time, they have to do it by some other method other than hearsay evidence."

The Court: My view of that is that no effort here is being made to establish what took place at the debate. The content of the debate is irrelevant and is not sought to be introduced. The only thing that is relevant to this case is its timing.

There has already been testimony in the case Conf. that it did, in fact, take place. I think one of the 12/8/67 witnesses did actually put a date on it, which appears to be in conflict with his version. I think page 12 } it was one of the witnesses who said it took place in '65. I think it was Lloyd who said he had heard a partial tape of it. The letter, 5G, on which there is handwriting testimony, was an utterance written by Patler which refers to something that took place, though it seems to me that the fact of its occurrence is not what is now sought to be introduced. It is already in evidence that it occurred. The only thing now sought to be introduced is its time. For that purpose and that limited purpose, it seems to me proper to allow him to refer to a notation he made at a time when this fact was fresh in his mind, which was a memorandum of his own and kept, in effect, what was the regular course of his business, at the time when he would have no motivation to falsify it because what he was doing was disseminating news to the members of the party, which was apparently his function at that time. Under those circumstances, it would be an exception to the hearsay rule and so, for the purpose of establishing the time, I will let him refresh his recollection from that.

Mr. Harrigan: Exception on the grounds previously stated.

* * * * *

Matt Koehl

By Mr. Hassan:

Q. Does that refresh your recollection when the debate took place?

A. The 29th of July, 1966.

Q. What was it from?

A. It was the "At Random" program, the tele-
page 1910 } vision program, I believe it was the CBS outlet,
WPBM TV, I'm not absolutely certain on that.

Q. Does that refresh your recollection as to how you obtained this information?

A. I obtained it from Commander Rockwell, you mentioned he had appeared.

Mr. Harrigan: Objection to what he mentioned, I move to strike it.

The Court: Don't tell the content of what he said, the answer is sufficient, he got that from a remark made by Commander Rockwell, I gather.

By Mr. Hassan:

Q. Does reading that bulletin refresh your recollection as to the trip that Commander Rockwell was on at that particular time?

A. I don't know the exact nature of it, I know he was present in Chicago at that time to open up the Chicago Headquarters.

Q. Do you know when the Chicago Headquarters were opened?

A. It was that same month, I believe it was earlier in the month, there again, I will have to refresh my memory.

Q. Do you have any independent recollection
page 1911 } of where John Patler was and what services he
was performing for the Nazi Party at that
time?

A. He was in charge of the party's publications, I honestly don't know where he was at that time.

Q. You do not?

A. No, sir.

Q. Do you have any records that would show where he was performing his duties at that particular time?

A. I can't recall any at the present time.

Q. I'd like to offer this in evidence, Your Honor.

Now, sir, I would like to show you—

Matt Koehl

The Court: Wait a minute, Mr. Hassan, have you gentlemen seen this?

Mr. Harrigan: Yes, sir.

Mr. Hassan: Yes, I showed it to him when it was identified.

The Court: Is there an objection?

Mr. Harrigan: Yes, Your Honor.

The Court: Objection sustained.

(The document previously identified as Commonwealth's Exhibit No. 55 was received in evidence.)

page 1912 } By Mr. Hassan:

Q. I would like to show you Commonwealth's Exhibit 5G for identification and ask you, sir, whether or not you have seen a copy of this?

A. I don't recall ever having seen a copy.

Q. Have you made a search for the original of that?

A. Yes, I have, sir.

Q. When did you make your first search for the original of that?

A. I believe there was a search made for some document right after the assassination, whether or not this was it, I can't recall.

Q. Was there subsequent searches made for that?

Mr. Harrigan: Your Honor, he didn't say there was any search made for that, how can he have a subsequent search? He said, "I believe there was a search made for some document."

The Court: I thought his response to an earlier question was that he had made a search for the original, I thought he testified to that point, if there is any doubt about it you can clear it up, Mr. Hassan.

Mr. Hassan: I thought he had testified to that, and then I asked him when the first search was made, and now he said it may have been that search for documents
page 1913 } immediately after the funeral, I want to know what other search was made.

The Court: Mr. Koehl, was there, in fact, a search made for the original of that document, to your knowledge?

The Witness: Yes, there was, sir.

Mr. Hassan: Has the original been found?

The Witness: No, sir.

Matt Koehl

Mr. Hassan: Is there a possibility that the original exists at Nazi Headquarters?

The Witness: There is a possibility, I just don't know.

Mr. Hassan: But the search did not discover it?

The Witness: We haven't been able to locate an original of this document.

Mr. Hassan: I'd like to offer 5G in evidence, Your Honor.

The Court: Mr. Koehl, to what extent has it been looked for.

The Witness: Well, I think quite thoroughly.

The Court: Is there an objection?

Mr. Harrigan: I'd like to ask a couple of questions.

VOIR DIRE EXAMINATION

By Mr. Harrigan:

Q. Did somebody ask you to look for that page 1914 } document?

A. That's correct.

Q. You specifically remember that document?

A. I don't remember at the time, in other words, at the time it was written or thereabouts, I do not recall any document similar to that, since this case has come up I remember seeing a photostat of it, and having been asked to look for it.

Q. Now, apparently you didn't do any looking for it.

A. Presumably, it is the document which has been shown to me.

Q. You didn't do any looking for it, apparently, did you?

A. Yes, sir, I did.

Q. Where?

A. We looked for it in our offices.

Q. Who else, you are talking about we, was somebody else looking for it?

A. I can't honestly say whether there were any other persons who might have had an eye out for it. I was the primary individual searching for it.

Q. Did you go through all your files?

A. I went through every conceivable place where I thought this document might have existed, yes, sir.

page 1915 } Q. I said did you go through all your files?

A. I didn't go through every single folder, if that is what you mean.

Q. What would that be filed under?

Matt Koehl

A. Well, it presumably would either be in something relating to the defendant or to Commander Rockwell.

Q. That is two files?

A. That is right, sir.

Q. Are those the files you went through?

A. I checked to see whether it was anything possibly that would have filed with those two individuals.

Q. Do you have a correspondence file?

A. That's right.

Q. Is that another file?

A. That is a letter file, that's correct.

Q. I said another file.

A. A card file.

Q. What date was it you said that you looked for this?

A. I don't recall the exact date, it was within the last two weeks, on at least, I would say, at least two or three occasions.

Q. That's all.

The Court: All right, sir, have you any objection now?

Mr. Harrigan: Yes, Your Honor.

page 1916 } The Court: What is the basis of your objection?

Mr. Harrigan: If we are going to argue it, I would just as soon argue it now, I have all the same objections as before, and apparently, the only one we are questioning at this time was whether there was a diligent search made. He said he looked through the Commander's files and Patler's files, two files. Now, I don't know whether you call that a diligent search, it doesn't appear to be a proper foundation, he doesn't know when he looked, he looked a couple of times here and there, I don't think a proper foundation has been laid on that issue alone.

Mr. Hassan: I don't think he has to look in the Harrigan file, I think he has to look in the files as appropriately as he can and he has, I think it is a proper foundation and all the effort possible has been made.

The Court: The police have testified that they requested a search be made, and that they did some looking, but of course, they could not, within our search and seizure laws, have gone up there and held a search themselves.

Mr. Koehl testifies that he looked for it, rather thoroughly, he says, the letter contains some internal evidence which

Matt Koehl

would tend to explain the absence of the original
page 1917 } because, among other things, it says, "Please be
sure to return this letter," and so forth, so that
would further tend, it seems to me, to explain why the original
hasn't been found.

I think that a sufficient foundation has now been laid, and
that each of the objections that the defense made, which were
well taken at the time, have since been met by the Common-
wealth.

There has been a dating of it, within rough limitations,
evidently it was written about thirteen months before this
event.

Mr. Harrigan: We have a further objection, on remoteness,
I think we have already discussed remoteness.

The Court: Remoteness in time, you mean.

Mr. Harrigan: Remoteness in time, it doesn't have any
possible probative value.

The Court: I understand that in that connection, gentle-
men. I cite you the case of *O'Boyle versus Commonwealth*,
decided in 1901.

Mr. Harrigan: If we are going to argue this and cite
cases, it seems like we ought to do it outside the presence of
the jury.

The Court: Do you gentlemen have some more
page 1918 } citations you want to give me, I thought you al-
ready argued this matter.

Mr. Hassan: I thought this had been settled, Your Honor,
two weeks ago.

The Court: I thought it had, too, I will give you an op-
portunity, if you want, to present some further authorities
and put them on the record, but for my purpose, I think this
case covers it rather thoroughly, it is in 100 Virginia, Page
785, and it says, "In cases of homicide, where the *corpus
delicti* has been proved, it is competent"—

Mr. Harrigan: Your Honor, I would object to reading the
law and rulings of law in front of the jury and reading cases
in front of the jury.

The Court: The objection is overruled.

Mr. Harrigan: Exception.

The Court: "In cases of homicide, where the *corpus delicti*
has been proved, it is competent to show the relations of the
accused and the deceased, and their state of feeling and
course of conduct toward each other. Such evidence is re-

Matt Koehl

ceived for purpose of showing the motive and intent for which the act charged was done. The admissibility of such evidence is not determined by the length of time intervening between the threat or act proved, and the homicide under investigation, but the weight to be attributed to page 1919 } it by the jury will be in proportion to the proximity of time, and the directness of its connection with the principal fact under consideration."

Another point of *similarity* in this case with the present case is that it, too, contained evidence of a preceding quarrel between the parties which had been patched up, so that at the time, when that particular crime was committed, that evidence indicated that the relationship between the party had been good, but that there had been a prior quarrel. The Court of Appeals seemed to feel that the course of conduct or the state of relations between the parties was still admissible but that it went to the weight to be attributed by the jury, so the objection is overruled, and 5G will be received in evidence.

(The document previously identified as Commonwealth's Exhibit No. 5G was received in evidence.)

Now, the reason I want the jury to hear that is that it goes along with a cautionary instruction I want to give them, that is this, ladies and gentlemen, this letter is admitted for only purpose and that is to the extent that it may throw some light upon the personal relationship which had page 1920 } existed between the accused and the deceased and not for any other purpose, its purpose is not to show what kind of a person the accused is or to create any prejudice or bias, either for or against him, its only purpose is to throw some light upon the relationship existing between Mr. Patler and Mr. Rockwell.

Now, in deciding what weight to give it, you should take into account its contents, its tone, and the time when it was written, which according to the evidence was a substantial period of time before this event.

I don't see an identification mark on this, is this marked or was the envelope that it was in marked?

Mr. Hassan: The envelope was marked, Your Honor, and this particular document should be marked.

Matt Koehl

The Court: The document is not, do you want the document marked?

Mr. Hassan: I would like to have it marked in case it gets separated.

The Court: In order to avoid any confusion, I will strike the mark on the envelope and make this notation on the document, itself.

Mr. Harrigan: Note my exception to the Court's ruling and the manner in which it was made.

page 1921 } By Mr. Hassan:

Q. Now, sir, when you came to Arlington County with the American Nazi Party, what date did you say that was?

A. It was early in February, I believe it was the 4th, I am not sure.

Q. What year was that?

A. 1963.

Q. Now, at that time, what was your rank, if any?

A. Well, I was transferred here from Chicago, my ST rank was captain.

Q. Was the defendant, John Patler, here in Arlington at that time?

A. No, sir, he was not.

Q. Where was he?

A. I believe his residence was in New York at that time.

Q. Was he there on American Nazi Party business, do you know?

A. When I arrived?

Q. Yes.

A. No, sir.

Q. Was he connected with the American Nazi Party at that time?

page 1922 } A. No, sir.

Q. Now, did there come a time when he came back to the American Nazi Party?

A. Yes, sir.

Q. When was that?

A. I believe it was sometime in the summer of 1963, several months later.

Q. Now, from 1963 to July of 1966, did you have any knowledge of any difficulties that Commander Rockwell and John Patler were having?

Matt Koehl

A. From time to time there were personal quarrels occurring in that three-year period.

Q. Now, immediately prior to July of 1966, were there difficulties?

A. I can't recall any specific incident at that time, there could have been, but I don't recall any.

Mr. Harrigan: Objection to what could have been.

Mr. Hassan: I would like to show you—

Mr. Harrigan: Wait a minute.

The Court: The objection is overruled because he previously said there were quarrels, but he is unable to say if any of them fell at this time, overruled.

Mr. Harrigan: Exception.

page 1923 } By Mr. Hassan:

Q. I would like you to look at that handwriting and printing, and I ask you whether or not you recognize that?

A. I would recognize the printing, yes, sir.

Q. Whose would that be, sir?

A. John Patler's.

Q. Now, would you turn that over, sir, and tell me whether or not you have seen that before?

A. I don't believe I ever saw this after it was written, no, sir.

Q. Did you know that letter was written?

A. No, sir. I had no specific knowledge of it.

Q. Was that in the records of your headquarters after the—

Mr. Harrigan: I object to the leading of the witness, obviously, Mr. Hassan had it. I don't know who had it in the meantime.

The Court: It seems to me the objection ought to be sustained, I gather he had never seen this before.

Mr. Hassan: I was directing his attention to the time of its existence, did he know about it then, now, I want to know if it was in his records.

The Court: I thought he denied any knowledge of it.
page 1924 }

Mr. Hassan: At the time of the event I didn't understand him to say that he denied any knowledge of the

Matt Koehl

existence of the document, but he denied knowledge of the events. He recognized the handwriting, but did not know the events, the way I understand it.

The Court: Mr. Koehl, have you seen the document before?

The Witness: No, I haven't, I mean I see it now and presumably, it came from our records and I did not see it—I can't recall, I know that Commander Rockwell, on a number of occasions wrote to Mr. Patler personal-type memoranda, but I don't recall ever having seen this one specifically.

The Court: All right.

Mr. Hassan: That is not something you found in the records when you made your search?

The Witness: It could have been, yes, sir.

Mr. Hassan: When did you make that search?

Mr. Harrigan: Your Honor, he says he hasn't seen it and he says, "That is not something you found in the records when you made your search," he doesn't know whether he had it or not.

The Court: I think, at this point, it becomes leading, Mr.

Hassan, he doesn't recollect having seen it before.
page 1925 } fore.

Mr. Hassan: Did there come a time subsequently to July of—

Mr. Harrigan: May I see this?

Mr. Hassan: Yes, when I get around to introducing it.

Mr. Harrigan: He asked the witness about it, I think I have a right to see it, has it been marked for identification?

Mr. Hassan: No, if the Court wants me to show—

The Court: I think it is a dead issue at this time.

Mr. Hassan: When the time comes, I would be glad to show it to him.

Mr. Harrigan: I would appreciate it.

By Mr. Hassan:

Q. Now, sir, did there come a time when there was a memorandum of modification of duty that was directed to the defendant, John Patler?

A. Yes, sir.

Q. What did you have to do with that, sir?

A. I have seen a copy of it, I believe it was issued directly by Commander Rockwell.

Q. What did you do—

Matt Kochl

page 1926 } Mr. Harrigan: Your Honor, I'm going to object to it.

Mr. Hassan: What did you have to do with it?

Mr. Harrigan: Your Honor, if he is going to testify and if he knows something about it, that is the way it ought to be done, but with his vague recollection and I am sure that is all he has, I don't think is admissible and I don't think adds much.

The Court: It does not furnish a sufficient foundation upon which to identify any particular fact, but if he wants to say that he just believes something, that may be a very honest statement and he is perfectly entitled to make the statement. There is nothing inadmissible about it, the problem comes when something is sought to be introduced into evidence based upon a statement like that, that hasn't happened.

Mr. Harrigan: If the statement isn't a sufficient foundation to introduce anything in evidence, then what is the value of this statement, the belief itself.

Mr. Hassan: That is the question for the jury, not for the Court or counsel.

The Court: Presumably Mr. Hassan will go to another question.

page 1927 } Mr. Hassan: I asked him what he had to do with it, if anything, that was my question, I would still like to know and I think it is a perfectly proper question, what he had to do with a memorandum and modification of duties of John Patler.

The Court: What was your answer to that, sir?

The Witness: I don't believe I had anything to do with it, I knew of its existence, Commander Rockwell. I believe, was the one who issued it—

Mr. Harrigan: I object to this.

The Court: The objection is overruled, if he knows he doesn't have anything to do with it, I take it he has no recollection of having anything to do with it personally.

Mr. Harrigan: I object to the ruling.

By Mr. Hassan:

Q. How were such directives, orders of Commander Rockwell issued? What were the mechanics of issuance of such an order?

A. Well, normally, if he had a directive to be issued, he would proceed to issue it by typing up a copy to send to the individual concerned.

Matt Koehl

Q. Would he have a mimeographed modification made?

A. That was the normal procedure, it was in this case, though.

Q. It was in this case?

page 1928 } A. That was the procedure, in this case, yes, sir.

Q. Now, I would like to show you two documents and ask you to answer yes or no, are you familiar with both or either of these?

A. Yes, sir, I am.

Q. Is it both or which one?

A. I believe I have seen both, I have definitely seen a mimeographed copy, I believe I have seen this, the original (indicating).

Q. Did you see that before or after it was mimeographed?

A. I believe it was I who supervised the mimeographing of it.

Q. You supervised the mimeographing?

A. Yes, sir.

Q. I'd like to have these two documents marked Commonwealth's 57A and 57B, A being the rough copy and B being the mimeographed copy.

(The documents previously referred to were marked Commonwealth's Exhibits No. 57A and No. 57B for identification.)

The Court: Gentlemen, I think this might be a pretty good time to suspend, you might take time to read page 1929 } these and have argument over these if they are sought to be submitted now.

I will excuse the jury now until 10:00 o'clock tomorrow morning. Ladies and gentlemen, we will try to function tomorrow from 10:00 until 2:00.

Mr. Hassan: May I take advantage of this moment, Your Honor, to reoffer two or three items?

The Court: Yes, but after the jury is retired, we will see you in the morning, ladies and gentlemen.

(Out of the presence of the jury.)

The Court: Gentlemen, a witness is still on the stand, does anything that remains to be done involve his testimony now?

Matt Koehl

Mr. Hassan: No, I think right now we should suspend and give them a chance to think about this and take it up when we come back and I would like to reoffer several items of evidence.

The Court: You haven't offered this into evidence yet, have you?

Mr. Hassan: No, sir, just for identification.

The Court: All right, we can excuse Mr. Koehl, there's nothing pending?

Mr. Harrigan: Nothing to ask him now.

page 1930 } The Court: All right, Mr. Koehl, you are
excused until 10:00 o'clock tomorrow morning
and the same instructions hold, not to discuss the case with
anyone except counsel until then.

(Witness excused.)

(Further discussion out of the presence of the jury.)

* * * * *

Conf.

12/8/67

page 12 }

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Conf.

12/8/67

(Further discussion out of the presence of the jury.)

page 13 }

Mr. Hassan: I would prefer not to bring one witness' testimony up twice.

The Court: You don't think we are going to be through with him by 2:00 o'clock tomorrow?

Mr. Hassan: I don't see any possibility.

The Court: Gentlemen, this is just too much on the jury. I'm afraid that we are going to have to break it if we have to break it, because I won't miss tomorrow's session for anything. They have been impounded now for a long time and it is getting less to the Christmas season and it is a great imposition on them. I know there are all sorts of factors that have to be weighed in breaking the testimony of a witness, so

do it as best you can tomorrow, but I'd like to go right ahead with it.

Mr. Harrigan: I take it that if it gets close to finishing tomorrow, we won't have to be ready for our testimony until Monday morning? Our side will take about five minutes.

The Court: You mean the defense case? I wouldn't expect you all to start. We will quit whenever they rest.

Mr. Harrigan: All right, sir.

Conf.

Mr. Hassan: Before Mr. Koehl gets away, may I speak to him?

12/8/67 } The Court: Yes.

page 14 } Mr. Hassan: I don't think they are entitled to any files. If they have got a motion, they ought to make it and argue it. This is fine, you know, to set me up like a pigeon and let those three shoot at me.

The Court: From what you just said, I don't think there is a chance in the world the Commonwealth will rest tomorrow, but I have told Mr. Harrigan that if the Commonwealth should rest its case tomorrow, we will quit at that time.

Mr. Hassan: There isn't a chance of a snowball in a proverbial place, Your Honor, not under those circumstances.

The Court: You think you can find something to occupy your time until 2:00 o'clock?

Mr. Hassan: No problems.

Mr. Harrigan: Just as long as I don't have to argue anything.

The Court: We don't think you will have any difficulty with that, Mr. Harrigan.

* * * * *

The Court: What would you like to do at this point, Mr. Hassan?

Mr. Hassan: I'd like to offer in evidence again Commonwealth's Exhibit 13B which is the fragment which Doctor Judson took from the body of George Lincoln Rockwell in the presence of Walter Kadel and at that point, handed it to Walter Kadel who then took it directly to Jesse Wismer, who took it to the FBI. That piece was in one piece when Walter Kadel took it and it was in two pieces when the carton was opened and Mr. Johnson of the FBI, explained while he was performing his tests, the piece broke off. A complete chain of custody has been established and I would move that the Court at this time admit 13B into evidence.

The Court: Is there an objection?

Mr. Harrigan: Yes, Your Honor.

The Court: What is the objection?

Mr. Harrigan: The objection is, we feel the page 1931 } chain of custody hasn't been complete.

The Court: As I recall, the police record here spoke for a chain of custody, while in the possession of the police. The FBI man actually got on the stand and testified as to this custody of it, it is true one of them said it altered its appearance. The ballistics man explained that while trying to straighten it out, he broke it, this was analogous, so it seems to me, the chain of custody has been complete.

Is there any other objection besides that?

Mr. Harrigan: No, Your Honor, other than the other objections we made at the time.

The Court: The objection is overruled and it will be received as 13B.

(The fragment previously identified as Commonwealth's Exhibit No. 13B was received in evidence.)

Mr. Harrigan: Exception.

Mr. Hassan: Are you ready for the next one, Your Honor?

The Court: Yes.

Mr. Hassan: I'd like to offer now in evidence, page 1932 } Commonwealth's Exhibit 44B, 44B was the envelope which was not opened until the FBI expert arrived, who stated it contained the bullets removed from the gun, and the fingerprint man stated that they were dusted for prints and removed in his presence by Mr. Johnson, and then were returned in a field envelope to the Arlington County Police. The gun has been admitted, I'd like, at this point, to have those bullets admitted, 44B.

The Court: Is there an objection?

Mr. Harrigan: I recall that he said that he removed a bullet from the gun over there, as a matter of fact, he said he didn't mark them, because he said he didn't find anything on them and, therefore, there wasn't any point in marking them.

The Court: I know the fingerprint man didn't mark them, but I rather thought the ballistics man did.

Mr. Harrigan: I don't think the ballistics man examined them.

Mr. Hassan: The ballistics man said he did mark it, the fingerprint man said he did not mark them, if he finds a print, he lifts it.

They are marked on the nose, Your Honor, they are marked with the same symbol that is on the envelope page 1933 } and with the "J" for Johnson and it's "Y" something or other, I wish I had the 20/20 vision with these glasses but I don't, but it's right clear that they're marked, maybe that is a "Q" then. Let me look at my trial brief, "K" would be the same exhibit as the gun.

The Court: Yes, my notes would indicate that he did mark them, that he testified that he did mark them so they will be admitted in evidence, that is 44B.

Mr. Hassan: 44B, Your Honor.

(The bullet previously identified as Commonwealth's Exhibit No. 44B was received in evidence.)

Now, I'd like to offer in evidence Commonwealth's Exhibit 50A through G, which are the seven fragments.

The Court: They are the ones removed from the automobile?

Mr. Hassan: Removed from the automobile at the paint shop, down in the yard.

The Court: I indicated there that I would require a chain of custody on that and I would take it that has been shown by the testimony of Officer Wismer and the FBI man, Johnson, and I believe Parsons, who had them in their custody, and testified that they then returned it to Wismer.

page 1934 } Mr. Harrigan: If I understand, most of those weren't marked and weren't examined at the FBI because they were so small, so whether they have any connection with this case or not has certainly not been established, either they found a piece in the car, well, they didn't even say it was lead, found a piece and sent it to the FBI and nothing happened to it, then they sent it back.

The Court: You have touched on something else, whether or not it has any bearing in this case or not, a large portion exists as to any of this nonprobative matter, like boxes of dirt, do they have anything to do with this case?

Mr. Harrigan: That does, because there's testimony about it.

The Court: There's testimony about this, that it came out of the car, but it evidently was not used by the ballistics man.

Mr. Hassan: It was examined by him but not used in his finding, but it was examined.

The Court: I think he said they were the type of fragment

that would come out of that bullet, but he certainly didn't conclude that it had anything to do with the case.

What I will do, Mr. Harrigan, is admit this, page 1935 } because I think I reserved only the chain of custody in question. I would have admitted it, otherwise, except for that, but when you get to the end of the case, it would seem to me that there are a lot of items in this case that have no probative value, they don't establish any fact in issue, then you are entitled to make a motion to strike them.

Mr. Hassan: I am not moving their admission, you're talking about the only thing that has been admitted are the six prints; all the paint chips, tar, and soil have not been admitted and I am not moving them.

The Court: Then, I would admit 50 into evidence, but I have some question as to their probative value under the facts in this case, except that they were testified to be bullet fragments found in the car.

(The fragments previously identified as Commonwealth's Exhibits No. 50A, No. 50B, No. 50C, No. 50D, No. 50E, No. 50F, and No. 50G were received in evidence.)

Mr. Hassan: I would like to move the admission, Your Honor, of Commonwealth's Exhibits 51A through N, which are the property records.

The Court: Mr. Harrigan, do you have any page 1936 } objection to the property records?

Mr. Harrigan: Yes, Your Honor, there has already been testimony that many of them contain things which are misleading from cross-examination, and items which the property man had no firsthand knowledge about concerning this testimony and the evidence as to that particular chain which has already been put in.

The Court: I'd say it is more than misleading, in some cases, your cross-examination has proved to be quite incorrect, but in other words, the ruling that I made with respect to those records was, as I recall, is that they were *prima facie* evidence of the truth of what they contain, as far as they spoke for transaction within the police department whose records they were. They weren't good as to transactions outside the police department, such as in the hands of the FBI, that had to be covered by other testimony, as it was, but they're only *prima facie* and to the extent that you can prove they're incorrect of that *prima-faci* presumption has been rebutted, but does that go to the admissibility?

It seems to me that just goes to the weight, you can point out to the jury they are just not true and that is just like the testimony of a witness on a stand who, on cross-page 1937 } examination, is contradicted, but it doesn't mean that he couldn't testify in the first place, they could hear him and then they also heard the contradiction. It seems to me it is in that category.

Mr. Harrigan: I don't object to the records of the transactions as part of the records so much, because that is what they're there for, but many of the other times on the record, the jury may look at those hearsay declarations that they put on the records and assume that that is what the facts are. I object to those, there are things on record which I wonder whether we had any testimony about on some of them as to where things were found, and who found them and so on, which is in direct conflict with the oral testimony of the witnesses and what was found.

Mr. Hassan: I know of no such instance and every person who found them and turned them in filled out that property sheet was cross-examined by you and his testimony, which was identical.

The Court: Not entirely.

Mr. Hassan: I don't know whether it was entirely identical, maybe it was a quarter of an inch off.

You had the man who found that on the stand twice.

The Court: I will admit them into evidence, page 1938 } but I think the defendant is entitled to an instruction that the only thing as to which they are admissible is a showing of the chain of custody within the Arlington Police Department, and that is only true insofar as not contradicted by other evidence, not to take them as absolute truth.

(The documents previously identified as Commonwealth's Exhibits No. 51A, No. 51B, No. 51C, No. 51D, No. 51E, No. 51F, No. 51G, No. 51H, No. 51I, No. 51J, No. 51K, No. 51L, No. 51M, and No. 51N were received in evidence.)

Mr. Hassan: Now, if Your Honor please, I would like to offer into evidence again Commonwealth's Exhibit 43, being the coat.

The Court: Do you object, Mr. Harrigan?

Mr. Harrigan: Yes, Your Honor, I do object and, as a matter of fact, as long as he is offering it, I suppose the next one is going to be the hat.

Mr. Hassan: No, I don't intend to offer the hat at this time.

The Court: I have done a little reading on that subject but not really enough to satisfy, I did not admit it page 1939 } before because there wasn't any testimony to tie it to the defendant, there has now been testimony by two witnesses who say they saw the defendant wearing a coat of that kind.

Mr. Hassan: One was a little stronger than that.

The Court: One was a little stronger than that, just how strong that kind of testimony has to be, I am not certain at this moment and I would be glad if you gentlemen would look at the authorities on it and I will look at them, too.

Mr. Hassan: All right, I will reoffer that again at a little later time.

The Court: Do you have any authorities, Mr. Harrigan?

Mr. Harrigan: No, I thought many of these I would argue a little later and I didn't bring the authorities.

Mr. Hassan: I am not going to push you for it now, we will argue it a little later. I'm just trying to get out of the way the easy things, I'm not trying to get in a fight.

The next one we would like to offer in evidence is Commonwealth's Exhibit 41, which is the fragment of the roof of the car taken by Officer Taylor on the day of the shooting.

He went down to the property room and took out one fragment from the ceiling, if you recall.

The Court: What is the number, Mr. Hassan?

page 1940 } Mr. Hassan: 41, Officer Taylor's testimony.

The Court: The remains of a steel jacket projectile removed from the headliner of the car in the paint shop at 3:30 p. m. on the 25th. He places it in the box, didn't mark it, now recognizes it as the same, turned it over to Officer Skinner on the 25th, it is now marked and as I recall, the marking on it now is an FBI marking, that would be 23882. I missed that one, that must be F or G.

This has one of these symbols of Mr. Johnson's on it, Q23Y, the property form on that would be Exhibit 51F.

Mr. Hassan: Thank you.

The Court: This is one of these things he took to Mr. Johnson at the FBI on the 29th, received back from Johnson on the 31st and there appears to be a complete chain of custody to it, so it will be admitted.

(The fragment previously identified as Commonwealth's Exhibit No. 41 was received in evidence.)

Matt Koehl

Mr. Harrigan: Is this 41?

The Court: 41 was the steel jacket of a projectile, a lot of these things look to me like cartridge casings, but they turn out to be jackets according to this testimony.

page 1941 } Mr. Hassan: That is all at this time, Your Honor, at the moment in contention, our Exhibit 8A, the towel, Exhibit 42, the cap, and Exhibit 43, the coat.

The Court: You are not proposing to introduce these various things that are just marked for identification.

Mr. Hassan: I don't propose to introduce any of those oyster boxes again.

Mr. Harrigan: We may, though.

The Court: Recessed until 10:00 o'clock tomorrow morning.

(Whereupon, at 7:15 p. m., the taking of the Court hearing was concluded.)

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page 1943 }

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The Court: Are you ready for the jury?

(The jury was polled.)

The Court: The same witness, Mr. Hassan?

Mr. Hassan: The same witness, Mr. Koehl.

Whereupon, MATT KOEHL, resumed the stand, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. Mr. Koehl, I'd like to show you two pages here, and ask you, sir, whether or not you know what they are, please answer yes or no.

A. Yes, I do.

Matt Koehl

Q. Is that something that you had?

A. Yes, I did.

Q. How did you receive it?

A. I received it through the mail.

Q. Who did you receive it from?

A. It was from Commander Rockwell.

Q. Now, looking at the handwriting on there, because of
your long association, can you say that is
page 1944 } George Lincoln Rockwell's handwriting?

A. Yes, sir, it is.

Q. When you received that, what did you cause to be done,
if anything?

A. Well, after receiving it, I held it for several days.

Q. This was prior to the discharge from the party of John
Patler?

A. No, sir.

Q. Not going into contents, what did you physically do with
it, if anything?

A. I had it mimeographed.

Q. Did you supervise that mimeographing?

A. Yes, I did, sir.

Q. I would like to show you this, sir, and ask you whether
or not that is the mimeographing that you had done?

A. Yes, it is.

Q. 58A and 58B, now did there come a time when you per-
sonally delivered the original or a copy of these items to the
defendant, John Patler?

A. Yes, there was, sir.

Q. When was that?

A. That was on the 4th day of April of this
page 1945 } year, 1967.

Q. If Your Honor please, I am going to offer
these in evidence.

The Court: Do you object, Mr. Harrigan?

Mr. Harrigan: Yes, Your Honor.

The Court: Do you all wish to be heard on this at this
time, I will excuse the jury if you do.

Mr. Harrigan: I do.

The Court: The jury will please retire.

(Out of the presence of the jury.)

Matt Koehl

VOIR DIRE EXAMINATION

The Court: Mr. Koehl, on Exhibit 58A, whose writing is that in red or brown ink?

The Witness: That is Commander Rockwell's.

By Mr. Hassan:

Q. Then the entry at the bottom of it which says, "Major Koehl, by order of Commander Rockwell," was that written by him or written by you?

A. Written by him.

Q. Was that a rough draft that he prepared and gave you and from it, you prepared 58B and disseminated it?

A. That's correct.

Q. To whom was it disseminated?

A. It was disseminated to our party members.

page 1946 } Q. That included Mr. Patler, did it?

A. He received the original, whether he received any mimeographed copies, I couldn't say.

Mr. Harrigan: What original, you mean there is another one?

The Witness: This was typed up in an original form.

The Court: Was that a signed letter, then, by you?

The Witness: Yes.

The Court: So you gave him the original of a letter that was prepared from this rough draft, which you signed?

The Witness: That's right.

The Court: Did you give it to him or mail it to him?

The Witness: I gave it to him.

The Court: All right, Mr. Harrigan, do you wish to examine?

Mr. Harrigan: Yes.

Do you have any knowledge of any of the allegations that Rockwell asserted against Patler, which are reflected in the letter?

The Witness: Yes, I do.

page 1947 } Mr. Harrigan: Firsthand knowledge or is it what Rockwell told you.

Mr. Hassan: That is firsthand knowledge, I object to him implying that it is not. Business dealings between the deceased and the man he has directed to do something, the discussions are firsthand, it is an exception to the hearsay rule.

Matt Koehl

The Court: I will let him draw the distinction in his questioning, though.

By Mr. Harrigan:

Q. Now, there is an allegation in there that Patler called the Commander of the party a liar and a person guilty of dishonorable action, who took vacations on party funds when he should have used the money for paper, do you know of your own knowledge that Patler called him a liar and told him that he was taking vacations on party funds which he shouldn't do?

Mr. Hassan: I am going to object to that, it is immaterial and irrelevant, the document is an official discharge and speaks for itself, he doesn't have to have firsthand knowledge, this is the action of the deceased.

Mr. Harrigan: You are offering it for the truth of the allegations?

page 1948 } Mr. Hassan: No, for the animosity that existed and the reasons for them and the discharge from the service. I wouldn't offer it for the truth of what Patler said, or what Rockwell said. I have got a lot of what they both said on the same sheet of paper and I am not offering it for truth at all, just for the existing animosity.

The Court: Go ahead, Mr. Harrigan, if you want to inquire about it.

By Mr. Harrigan:

Q. Do you know whether Patler called him a liar and told him that he shouldn't vacation on party funds or is this something that was communicated to you through Rockwell?

A. The first part of that, he did call Commander Rockwell a liar, either in those words or in some words in the form of a letter, where if left no mistake that that is what he had in mind.

Q. Not in this letter, I mean in some other correspondence.

A. He had indicated that Commander Rockwell was a liar and in another letter that was written a short time before all of this took place.

Q. I would object to this as an utterance, which it apparently is of Rockwell's and the only utterance of
page 1949 } Rockwell, which I think would be admissible
would be dying declarations, other utterances

Matt Koehl

would be hearsay, I don't think you can show who is guilty by virtue of a hearsay document from the deceased, you may be able to show who is guilty from the hearsay document from the defendant, but our position is that there's no foundation laid to show that any of these matters are, in fact, true, that they are going to be offered and taken for that purpose, that all of these were, in fact, true, and since Rockwell is the one who apparently wrote this, we would object to it on the ground of hearsay and that it does not fall within any exception to the hearsay rule.

The Court: Mr. Hassan just said that he is not introducing it to show the truth of the matter contained therein, but just the fact of utterance, that there was a communication from Rockwell to the defendant which, in effect, was a dishonorable discharge or some such thing. It's being offered for the purpose of showing the basis for animosity, not because anything in it is true, but just because of the fact that this was communicated to the defendant. The mere fact of its communication is, evidently, what he is seeking to prove.

Now, if the jury is instructed that they are page 1950 } not to accept anything in it as true but simply as having been a document communicated to the defendant on behalf of Rockwell by this witness, would that not relieve your objection?

Mr. Harrigan: No, Your Honor, I think the objection goes to the fact that there are items in there which accuse Patler, certain utterances which Patler is supposed to have said, namely, that Rockwell is a liar and that he is doing dishonorable things, and that the only foundation for those utterances is the correspondence from the deceased, Rockwell, himself, the inference being that Patler had, sometime prior to that, communicated that utterance to the Commander. Our position is that that document cannot be used to show that Patler made any utterances to the Commander at all, that all it is, is merely a hearsay document relating that, and that the fact of utterance, the truth or not the truth, it doesn't even prove the fact of utterance except by virtue of what Rockwell says.

My understanding is that it certainly isn't any dying declaration. It falls outside that particular category, I don't know of any exception to the hearsay rule which would allow someone to write to someone else and make certain allegations.

Matt Koehl

Now, this second copy of it is just a rehash of page 1951 } the first, it is rewritten and, I suppose they could bring the third and fourth copy, but they wouldn't all be admissible, plus they are self serving on the part of Rockwell.

The Court: Mr. Harrigan, it isn't as though I called you some vile epithet which I assure you I would never do, and cast aspersions on your ancestors and so forth, and then later you were tried for assaulting me, would not the fact that I had said something mean to you be admissible in your trial, notwithstanding the fact that what I said to you was totally untrue, that I might have said something insulting and untrue to you, the truth of what I said would not be in issue at all, just the fact I said it and something that would be inclined to make you mad, would that not be admissible?

Mr. Harrigan: It would be admissible because I was there to testify about it.

The Court: No, if a bystander heard me say it, would not the bystander be able to testify that Russell called Harrigan a terrible name, and wouldn't that give him the motive to assault Russell?

Mr. Harrigan: Just because he heard it, he would know that it was, in fact, said, this letter does not prove it was said, the letter shows that Rockwell said it was said and is that a proper foundation to then attribute the page 1952 } remark to Patler? I say that that extra connection in there is enough to exclude it from evidence.

Mr. Hassan: The exception is that the person who could testify firsthand is dead, and it is not at a time in precedent to the event.

The Court: If it is, in fact, not the truth of the utterance that we are concerned with, but just the fact that it was uttered, the person who did the uttering, Mr. Koehl, according to his testimony, not Rockwell, himself, because evidently Rockwell didn't say these things to Patler, he put them on paper, Major Koehl signed that name to this letter, "Major Koehl, by direction of Commander Rockwell," or some such signature as that, "Matt Koehl, Major, by order of George Lincoln Rockwell," and then, in fact, mailed it, so isn't that the fact of utterance right there, the delivery of the letter by Koehl to Patler, it shows that Rockwell got the message, that would seem to me to be evidence, the only thing in issue here,

Matt Koehl

but I do think your point is well taken on the extent that this accuses Patler of certain conduct, whether he actually did those things or not is immaterial and isn't proved here because that is hearsay.

Mr. Hassan, do you have anything to say about this, other than what you have said?

page 1953 } Mr. Hassan: I don't believe at this time I do, Your Honor, there will be a whole series of documents related to this.

The Court: I think this is in the category of the letter last night in which a cautionary instruction was given to the jury when it was received. It should be covered in the Court's instructions in written form, but they should also be instructed when it is received, because the trial is a long one and they are likely to get a mental fixation that they should receive this as evidence of the truth of statements contained in it. I would not want them to do that.

Mr. Hassan: I don't believe that any of the documents that will be presented, some of which I don't know that they will all be admitted, I believe they will or I wouldn't offer them, some of which will be the statements of Patler, they will not be admitted for the truth of what he said and the replies of Rockwell and the replies of Patler only for the existence of the animosity and a continual and running battle and it runs on for a long period of time.

The Court: It is my view then that the documents are admissible, only to prove the fact of utterance and to the extent that it can be proved that they were communicated to Patler.

page 1954 } The fact of that communication is admissible, but the jury should be instructed that nothing contained therein is to be taken as a true statement and there is no evidence as to whether it is true or false, and it is strictly hearsay as to its content, so I will admit for that limited purpose 58A and 58B.

(The documents previously identified as Commonwealth's Exhibits No. 58A and No. 58B were received in evidence.)

Mr. Harrigan: Exception, Your Honor, on the further ground of the prejudicial effect of what is in there that he called him a liar and certain other names that he did, otherwise the probative value of the utterance and it should be stricken on that basis and the other grounds which I have stated.

Matt Koehl

Mr. Hassan: I believe they are admissible under the O'Boyle case, 100 Virginia 785.

The Court: Would you call the jury, please.

(In the presence of the jury.)

The Court: Members of the jury, the Court has admitted into evidence Exhibits for the Commonwealth 58A and 58B, which has just been testified to by this witness. 58A, he says, is a rough draft, partly typed and partly written page 1955 } ten on, in Rockwell's handwriting and that he used it as a rough draft, upon which he prepared a letter which he signed himself, by the direction of Rockwell, which letter he delivered to the defendant and then mimeographed that letter and sent it out to party members. 58B is the mimeograph form.

The Court's instruction to you with respect to that is that since Rockwell is not here to testify under oath, we cannot consider that the truth of what is said in this letter has been established and these are not received in evidence to prove the truth of their content at all, there is simply no evidence one way or the other as to what is said in the letters, the only purpose of admitting them is to show the fact of utterance, that is to show that this communication was made to the defendant. You are instructed to consider them only for the purpose of their communication to him, in order that you may consider what, if any, light that might throw upon the relationship between the defendant and the deceased, Rockwell, but that the truth of the content of the letters is not before us in this case, is not material, and has not been established.

Mr. Hassan: Your Honor, 58A, being a rough draft, and 58B, being the original, I would like to read 58B page 1956 } into record.

The Court: I think it is sufficient just to let the jury look at it.

Mr. Hassan: I want the jury to look at it, Your Honor.

The Court: It is in the record when it is marked as an exhibit.

Mr. Hassan: It may be and it may not be, it wouldn't be in the transcript.

Mr. Harrigan: I would object, I'm sure Mr. Hassan has practiced that.

Matt Koehl

Mr. Hassan: Your Honor, he drove me to the books this morning and according to Am. Jur.'s "proof of facts," the proper procedure for a diligent lawyer is to see that the transcript has in it the words of the written exhibits. There's quite an admonition in that rather extensive work on making sure that the contents of written documents are in the transcript.

The Court: I will permit it, go ahead.

Mr. Harrigan: Can we let the witness read it, then?

Mr. Hassan: I prefer to read it, Your Honor, do you want to follow a copy to make sure I don't slip?

Mr. Harrigan: No.

page 1957 } Mr. Morris: I do.

Mr. Hassan: "TO: John Patler, (1) On 30 March 1967 you were relieved of command of the Print Plant and transferred to the Barracks in Arlington for: (a) repeatedly abandoning your command for periods of almost a week with neither notice nor permission from the Officer-in-Charge; (b) gross insubordination and insulting conduct to superiors; (c) gross neglect of duty in failure to produce more than two (2) STORMTROOPERS in one year; (d) promotion of dissension and upheaval at both headquarters to which you were assigned; (e) persistence in promotion of a spirit of distrust by non-Nordic Members of the Party of the Nordic Members, including the incredible toleration or promotion of the derogatory term of "blue-eyed devils" applied to the Nordics by Mediterraneans, in spite of the firmest possible Party policy of White unity; and (f) arrogant usurpation of authority, in leaving out of the latest STORMTROOPER the pages of items for sale, on which the Party depends for its financial existence, with gross disregard for the authority and needs of the Dallas Sales & Subscriptions Division.

"(2) You were offered the opportunity to submit the matter to a Party Court, but declined, You agreed to accept transfer to Arlington, and to proceed with Party business.

page 1958 } "(3) You asked for and were granted the right to make a written answer to the charges leveled against you in the transfer order; and the Party agreed to mail out your answer to all those who received the charges.

"(4) On or about 31 March 1967 you mailed to our Dallas Office a letter attempting to "explain" your actions in leaving

Matt Koehl

out the advertisements from THE STORMTROOPER without notice or agreement or permission from anybody. In this letter, you submitted no facts, but called the Commander of the Party a 'liar' and a person guilty of 'dishonorable actions', who took a vacation on Party funds which should have been used for paper. It is manifestly impossible for you to serve under the direction of a man you consider a 'liar' and 'dishonorable.'

"(5) The letter to Dallas makes it abundantly clear that, far from feeling any guilt or remorse, you are determined to 'prove' to the Party that you are right at all costs, and that you will persist in your hostile and irresponsible conduct.

"(6) You will still be given a complete and fair chance to prove your charges to the entire Party, if you so desire, on the week-end of 10 and 11 June at a Party Court. I hereby bind myself to abide by a vote of all Party Members present, sitting as a jury in this extraordinary case.

"(7) In the meantime, you are summarily dis-
page 1959 } missed from the Party, as of the moment of
delivery of this letter by Major Koehl.

"(8) Major Koehl has been directed to supervise the careful and just separation of your personal possessions from Party material and property in your *custody*. He has also been advised to request the presence of an Arlington law enforcement official at such separation, if possible, in view of your conduct the previous time you acted irrationally against the Party and left in the night with Dan Burros, after stealing your application, to start your own Party, and attacked this Party and my person.

"(9) You are directed to vacate the Party premises forthwith.

"(10) If you make any further attacks of any nature upon the Party or me, you will not be permitted to bring this matter before a Party Court."

Mr. Hassan: Then there is a line for the signature.

"Matt Koehl, Major, National Socialist White People's Party

"By order of George Lincoln Rockwell, Commander, National Socialist White People's Party. Date: 4 April 1967."

Mr. Hassan: Now, Mr. Koehl, paragraph
page 1960 } one—

Matt Koehl

The Court: Mr. Hassan, I told the jury in connection with the precautionary instruction how it was delivered, but I think they have not heard his testimony on that point, which is the real purpose for which it is offered, which you better go through in their presence.

By Mr. Hassan:

Q. Did there come a time when you personally delivered the original of that discharge to John Patler?

A. That's right, sir.

Q. When did you do that?

A. It was on the 4th day of April, 1967.

Q. Who was present?

A. At the exact moment of delivery, no one was present.

Q. Did there come a time when you followed the instructions for the separation of John Patler from the party headquarters?

A. That's correct.

Q. How was that accomplished?

A. I was on hand, present in the area where he both lived and worked, while he was getting his personal belongings together and separating them from party materials.

Q. Did there come a time when any document page 1961 } was presented to him for his signature?

A. There was.

Q. What document was that?

A. There were two documents, one was to the effect that—I had requested him to sign—I requested him to sign both of these documents, the first was to the effect that he had—

Q. Before you tell us what they were to the effect of, did he sign either one?

A. No, sir.

Q. You presented two documents which he refused to sign?

A. That's correct.

Q. Was anyone present at that time?

A. Yes, sir.

Q. Who was that?

A. There were at least three persons present, one of them was Donald Parsons, Howard Williams, I don't recall at this instant, I have a record of it somewhere, but I don't have knowledge of it at this time.

Q. Now, sir, paragraph one of this discharge referred to what is called "on 30 March 1967, you were relieved of com-

Matt Koehl

mand of the printing plant and transferred,"
page 1962 } I show you Commonwealth's Exhibit No. 57A
and 57B for identification, and ask you, sir,
if that is what was referred to in paragraph one of the discharge?

A. Yes, it is.

Q. I understood you to say yesterday that you supervised the mimeographing of the rough draft, which is 57A.

A. That's right.

Q. Did you also disseminate the mimeographed copies of that, sir?

A. Copies of the mimeographed, copies of the modification of duties document, which is here before me, were disseminated to some of the members, not all of them.

Q. Is that the dissemination which is referred to in the discharge?

A. Yes, sir.

Q. In the paragraph three, where it says, "The Party agreed to mail out your answer to all those who received the charges," is that what they are referring to there?

A. That's right.

Q. I'd like to offer that in evidence, Your Honor.

The Court: Has counsel seen it?

Mr. Hassan: Yes, yesterday, I have a copy I will give them, like I gave them on the other.

page 1963 } The Court: Is that 57?

Mr. Hassan: 57A and B.

The Court: Mr. Koehl, I show you 57A for identification and ask you who typed that, if you know?

The Witness: I believe it was Commander Rockwell.

The Court: Is any of his handwriting on it?

The Witness: There is an insertion, "Captain," before John Patler, and it appears to be Commander Rockwell's style of writing but that is the only indication, sir.

Mr. Hassan: May I ask a question?

The Court: Mr. Hassan, go ahead and ask him, but I have lost something here, is this supposed to be the item that was given to the defendant to sign, and he refused to sign it?

Mr. Hassan: No, sir. this was the item that preceded the dismissal, this was the modification of duty which was offered yesterday for identification.

Matt Koehl

The question I would like to ask is, did Commander Rockwell personally give you that to have mimeographed?

The Witness: Sir?

Mr. Hassan: Did Commander Rockwell personally hand you that to mimeograph and disseminate?

The Witness: Yes, he turned it over to me page 1964 } with the instruction to go ahead and have it mimeographed.

The Court: Do you happen to know if they were communicated to the defendant and if so, how, of your own knowledge, not by what someone may have told you.

The Witness: In the modification of duties?

The Court: Yes.

The Witness: I believe the modification of duties was submitted or handed to the defendant in printed form, just as it is given in this exhibit.

The Court: In other words, one of the mimeographed copies would have been given to him?

The Witness: That's correct.

The Court: Do you know who did that?

The Witness: I believe it was Commander Rockwell, directly, at the time he—

Mr. Harrigan: Your Honor, if he knows, I mean his beliefs, I don't know what they are founded on and I object to his beliefs.

The Court: Were you present when Rockwell gave it to Patler or not?

The Witness: Well, here are the circumstances if you would like them.

The Court: All right.

page 1965 } The Witness: He had left instructions with me to have it mimeographed or to supervise the mimeographing, which I did, and I recall at the time he was anxious to get it to him because Patler was to appear within a relatively short time and there was a time factor there, getting this all mimeographed before he got there, and so we were able to accomplish this and one of the mimeographed copies, while it was still wet from the ink, was taken to the Commander for delivery to John Patler. I believe that he delivered it as he wanted to.

The Court: But it would not have been done in your presence in any event, the delivery of it to Patler.

The Witness: It could have been, I don't believe it was.

Matt Koehl

The Court: Is there an objection?

Mr. Harrigan: Yes, Your Honor.

The Court: Objection sustained.

Mr. Hassan: If Your Honor please, I would like to have a five-minute recess, the reason I want the recess is—I'd better approach the bench and tell you.

The Court: All right.

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page 3 }

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Mr. Hassan: Somewhere in the multitude of papers I have, I believe it is a blue inner-office form, handwritten request from Patler, I forget the girl's name, to have her put eight copies of the modification of duty under the door in his room, so I think this will show the communication. I'd like to go and get it.

The Court: All right. I will give you a recess. Could you go on with some other part of this examination, because we will be taking a recess later anyway.

Mr. Hassan: No, I will have to get this in this one or the next one. There is a whole chain here.

The Court: All right.

* * * * *

The Court: Court will recess for five minutes.

page 1966 } (Whereupon, a short recess was taken.)

The Court: Ready for the jury.

By Mr. Hassan:

Q. I show you this, sir, and ask you whether or not you recognize and can identify the printing and printer thereon?

A. Yes, I can, sir.

Q. Who is that?

A. That is John Patler's.

Matt Koehl

Q. I would like to have this marked as Commonwealth's Exhibit No. 59 for identification.

(The document previously referred to was marked Commonwealth's Exhibit No. 59 for identification.)

I'd like to offer this into evidence, Your Honor.

The Court: Is there an objection.

Mr. Harrigan: Yes, Your Honor.

The Court: What is the ground of the objection?

Mr. Harrigan: The objection is I take it that was offered for showing that he received certain documents and that doesn't prove he received anything, that proves he requested a certain document.

page 1967 } Mr. Hassan: I think it proves he had knowledge that he requested additional copies.

The Court: I don't think it is competent to establish the fact that you are interested in, which is that he received it, furthermore, I have some question about the admissibility of these documents, even if they could be established because, as I read O'Boyle's case, it says that a fact of the difficulty between the two parties may be shown, but not the details of the difficulty. It seems to me that just goes to show the details of the difficulties existing between them, which is really irrelevant, so the objection is sustained.

Mr. Hassan: Now, Mr. Koehl, did there come a time when you turned over—

Mr. Harrigan: Excuse me, Mr. Hassan, then how would that ruling affect the other memos?

Mr. Hassan: I am coming back to that in a minute.

The Court: He hasn't offered them and the objection was sustained.

Mr. Harrigan: He offered some of them.

The Court: 57A and B were received, 58A and B were not received.

Mr. Harrigan: They were read.

page 1968 } Mr. Hassan: That was the one that was received.

The Court: That was the one that is received in evidence, in with a cautionary instruction that only the fact of its existence should be considered and not the truth of it.

Matt Koehl

By Mr. Hassan:

Q. Mr. Koehl, did there come a time when you turned over to the Arlington County Police Department a file on John Patler?

A. Yes, sir.

Q. When was that?

A. That was shortly after the assassination of Commander Rockwell.

Q. Who did you turn it over to?

A. I turned it over to two of the detectives in the case, I believe one was Sergeant Kadel.

Q. Where did you turn it over to him?

A. At our headquarters at 6150 Wilson Boulevard.

Q. Did you examine the file?

A. No, sir, I don't recall.

Q. Did you look into the file?

A. I may have looked at one or two documents haphazardly, but I didn't go through each item in page 1969 } the file.

Q. Now, have you had occasion since then to examine any papers at the headquarters that might relate to difficulties between George Lincoln Rockwell and John Patler?

A. Yes, I have.

Q. Did you find any?

A. Yes, I did.

Q. Did you have firsthand knowledge of the situation referred to in there?

A. Yes, sir.

Q. Do you have that with you?

A. Yes, I do have a document that I was referring to.

Q. I'd like to have this marked Commonwealth's Exhibit for identification No. 60.

(The document previously referred to was marked Commonwealth's Exhibit No. 60 for identification.)

Do you recognize the printing or writing thereon?

A. Yes, I do.

Q. Whose printing or writing is it?

A. John Patler's.

Q. Did you search for the original of this photostatic copy?

Matt Koehl

page 1970 } A. Yes, sir.

Q. Were you able to find it?

A. No, sir.

Q. I show you this, sir, and ask you whether or not you recognize the printing or writing on these several sheets and the back of the last sheet, I believe you answered it once yesterday.

A. Yes, I do.

Q. Whose printing or writing is that?

A. It appears to be John Patler's.

Q. I'd like to have this marked for identification, Commonwealth's Exhibit No. 61.

(The document previously referred to was marked Commonwealth's Exhibit No. 61 for identification.)

The Court: While they are reading that, may I see No. 60, we might as well get started on this if I have to rule on it.

By Mr. Hassan:

Q. I show you this document and ask you, sir, whether or not you recognize any of the writing or printing thereon, and whose it is?

page 1971 } A. The printing and signature are those of John Patler.

Q. Is there any writing on the bottom of the second page?

A. Yes, there is.

Q. Do you know whose writing that is?

A. I don't recognize it.

Q. Now, would you take a look at the contents and tell me whether or not that is related to these other two documents, one that you brought in, one that I just showed you prior to this, as to subject matter?

A. There appears to be a *similarity* between the subject material in the previous documents and some of the documents in here.

Q. Are they related in a matter of time?

A. Within about three months, yes, sir.

Q. I'd like to have this marked Commonwealth's Exhibit No. 62 for identification.

(The document previously referred to was marked Commonwealth's Exhibit No. 62 for identification.)

Matt Koehl

I'd like to ask you to examine both these and tell me, sir,
whether or not you know they are unsigned, and
page 1972 } whether or not you know who wrote them and
who received them.

Mr. Harrigan: Your Honor, I don't know what this really
has to do with it, these things read like a comic, "Doctor
Pierce comes over with the groceries and a case of soda, if
you would have called me, I would have told him to bring a
couple of pounds of meat."

Mr. Hassan: I think you ought to read it all before you
get yourself in a box by commenting on the first few para-
graphs.

By Mr. Hassan:

Q. Can you answer that question I asked you, do you re-
member it?

A. Both of these were issued by Commander Rockwell to
the defendant.

Q. Were you familiar with them, the subject matter of
them?

A. I was familiar with the subject matter, yes, sir, not
with the documents themselves, previously.

Q. I'd like to have these marked Commonwealth's Exhibit
for identification 63 and 64.

(The documents previously referred to were marked Com-
monwealth's Exhibits No. 63 and No. 64 for identification.)

page 1973 } I'd like to show you these sheets of paper,
sir, and ask you if you are familiar with them
and if you recognize the subject matter, the handwriting, or
the printing thereon?

A. Yes, I do, I recognize them all.

Q. Just say yes or no.

Whose writing is that?

A. This is John Patler's here (indicating), I believe this
is some in the memo, itself, or one of the memos.

Q. I'd like to have this packet marked Commonwealth's
Exhibit 65.

(The documents previously referred to were marked Com-
monwealth's Exhibit No. 65 for identification.)

Matt Koehl

The Court: Are you finished with 62, I have seen 60 and 61, as soon as the defense finishes with 62, let me see that, please.

Mr. Koehl, let me show you No. 61, which appears to be a letter from Rockwell to Patler, as you have stated, I believe that the notes on there in pen and ink you recognize as Patler's printing, now, do you happen to have any knowledge as to when that printing was put on there?

Mr. Hassan: Did you read the back of the page 1974 } last page, Your Honor?

The Court: No, I didn't, there's some on the back of it?

Mr. Hassan: Yes, the back of the last page.

The Court: Now, do you happen to know if this was ever communicated to Rockwell?

The Witness: Well, this was in Mr. Patler's folder and so it would have been received, in other words, this has been delivered—it had left Mr. Patler's hands and it wound up in our folders and I presume, in the meantime, it had been directed to Commander Rockwell, inasmuch as it referred to the two—it referred to matters between the two individuals. I didn't have any previous knowledge of it, though.

Mr. Harrigan: Could I ask one question?

The Court: Yes, sir.

Mr. Harrigan: Didn't you just say you didn't know what was in the folder, you just glanced at it?

Mr. Hassan: No, he didn't, he said he glanced through it and did not examine everything in it.

Mr. Harrigan: Did you examine that in the folder?

The Witness: I didn't see this particular document at the time specifically.

page 1975 } Mr. Harrigan: What does "specifically" mean? Does it mean you didn't see it?

The Witness: If it was in the folder, I might have seen the top of it, but I wasn't aware of the contents of it.

Mr. Hassan: I might advise the Court that I intend to offer Exhibit 61, 62, 63, and 64 as evidence of controversy prior to Exhibit 5G, and 65 is evidence of controversy between 5G and Exhibit 58, which has been admitted.

Mr. Harrigan: I have read that before.

Mr. Hassan: 64 is a photostatic copy of the unmarked 61.

The Court: Did you want to withdraw 64?

Mr. Hassan: I will withdraw 64, or just won't offer it, Your Honor.

Matt Koehl

The Court: Mr. Koehl, most of these letters have dates written in the upper right-hand corner in red ink, do you know whose handwriting that is?

The Witness: No, I don't.

Mr. Harrigan: Is it the same red ink, did you see the red ink, I know it looks identical to me in the letters.

The Court: I wonder how he could know the answer to that, but he doesn't recognize the writing, it doesn't appear to be the same writing as in either letter.

page 1976 } Mr. Harrigan: Your Honor, I think all ten of the copies are the same.

The Court: They are stuck on the bottom of these memos, something that apparently doesn't relate to them, 65 purports to be a memo from Patler to Rockwell, enclosing a number of copies for Rockwell's signature, then there's another thing there that doesn't appear to relate to that, that goes back again to 1966.

Mr. Hassan: In one of the other letters, this is discussed.

Mr. Harrigan: Are you going to mark this?

Mr. Hassan: Do you want me to?

Mr. Harrigan: I don't care.

Mr. Hassan: Commonwealth's Exhibit No. 66 for identification.

(The document previously referred to was marked Commonwealth's Exhibit No. 66 for identification.)

If Your Honor please, I offer Commonwealth's Exhibits 60, 61, 62, 63, and 66 as evidence of controversy prior to Exhibit No. 5 and 65 as evidence of controversy between Exhibit 5G and Exhibit 58.

page 1977 } The Court: Is there an objection?

Mr. Harrigan: Yes, Your Honor. Your Honor has read most of them.

The Court: I have read them all, the objection is sustained. I'm sorry, ladies and gentlemen of the jury, to keep you all so long, but everybody has to read these things before I can rule intelligently on the objection, and until they can make up their minds as to what their position will be, I will exclude these, because in each case, it seems to me that to some degree, they are pure hearsay from the deceased with no way of knowing that they were true. For instance, in 63, but principally because they are just details of the difficulties between

Matt Koehl

the parties, which have already been established by the items which were admitted into evidence for a limited purpose.

As I understand the law to be on this subject, the details of the difficulty that existed between them really is not for the jury and is irrevelant, the fact that there was some difficulty has been abundantly testified to by witnesses or the stand and is, to some extent, shown by the exhibits which have been admitted, merely to show the fact of their communication. It seems to me, then, that to go into this would

be to take the jury off into a collateral excursion as to the internal problems of the Nazi Party, which is hardly connected with the issue

of the guilt or the innocence of the accused in this case, so the objection is sustained as to all of these objections.

Mr. Hassan: I'd like to take an exception to the Court's ruling on the grounds that the Commonwealth has not been allowed to present any law or argue the motion.

The Court: All right.

Mr. Hassan: May we have a recess?

The Court: Yes, sir, take a five-minute recess.

(Whereupon, a short recess was taken.)

The Court: Mr. Hassan, I did not mean to cut you off from stating your oppositon, I thought you had argued this as fully as you wanted to on 58A and 5G.

Mr. Hassan: These were different, I had found three cases, Your Honor, I can't find my notes on them here, anywhere, but there is a distinction between tort cases and will cases, where this question usually arises, where communication is an essential, but where the matter is in existence is of controversy and not the subject matter of the communication, my understanding from these cases is that it is not necessary to prove that, all you are proving is a state of mind, evidenced

by the writing, particularly, those two are from a deceased person and that was the purpose for which I offered that, I would not have wasted the Court's time and the jury's time, if I had not had those cases.

The Court: I confess it is a close question.

Mr. Hassan: It is a close question, you probably would have ruled as you did anyway, but on the other hand, I got up at 4:00 o'clock to get the law and I got it.

Matt Koehl

The Court: I was a little concerned about the lack of clear evidence of communication of these things and then, the timing—

Mr. Hassan: There's no question of communication, Rockwell writes Patler and Patler writes all over and sends it back to him and this is what he did on that exhibit yesterday, he circled it and wrote on it after it was identified and this is the way he does things, and it was a clear case of communication, which I thought was unnecessary.

The Court: I was also concerned as to some of them by the fact that they were dated by somebody else, and nobody knew by whom, they all appear to have the same handwriting in the upper right-hand corner, putting dates on them, in one case, the person dating them changed his mind and crossed out the date he wrote and wrote another date and that apparently was neither Patler nor Rockwell, be-
page 1980 } cause Koehl can't recognize the handwriting.

Mr. Hassan: But that was three or four times crossing each other, that evidently is the period, but a person did put them in a time frame, nobody saw the record except Rockwell and Patler and according to what Matt Koehl said, he didn't ever know they existed until he turned the file over to the police department. I assure you I have had the file for a long time and I didn't write anything on them.

The Court: Another thing is their content, they are mostly details of a squabble, none of them contain anything that I would consider at all threatening, if they were threats, I would let them go to the jury to show the state of mind of the defendant beyond any question, but they don't seem to be that, as a matter of fact, far from it, a lot of them have rather conciliatory, friendly expressions in them, but there's no doubt that the two, at the times the letters were written were having a series of disagreements.

Mr. Hassan: They piled up to that Exhibit 65, which is a demand for retraction on specific things and wound up in the discharge, which shows a long, simmering build-up of animosity, which is a repeat from when he first left the party.

The Court: I think it will be proper for the
page 1981 } Commonwealth to show, through this witness, and any other witnesses that may be available, anything that they have possible knowledge of as to disagreements between Patler and Rockwell, and if they can testify as to the actual controversy that is all right, but I am con-

Matt Koehl

cerned by the hearsay problem and utterances from Rockwell where you descend into whether it is true or not and who did what, and who said what, the fact that there's been a disagreement can be established, and the Commonwealth has been permitted to put on evidence to establish the fact of disagreement, but I apologize for not letting you put your arguments on the record, you are certainly entitled to do that.

Mr. Hassan: I have got to confess I did take a simmer-down recess.

The Court: Will you call the jury?

(In the presence of the jury.)

By Mr. Hassan:

Q. Now, Mr. Koehl, do you have any firsthand knowledge of difficulties between George Lincoln Rockwell and John Patler?

A. Yes, sir.

Q. Would you tell the Court and jury what that knowledge is?

page 1982 } A. On a number of occasions, within the year preceding his discharge from the party, there had been incidents between both Commander Rockwell and John *Palter*, and one was early in 1966, I believe there was another incident later in the fall, and also earlier in the year around January and—

Q. Is that January '67?

A. That is correct, and also prior to his leaving.

Q. Now directing your attention to early '66, what was that difficulty?

A. It appeared to have been some kind of dispute between the two individuals, both Mr. Patler and Mr. Rockwell, Mr. Patler was in charge of the premises in Spotsylvania County and well, there were a lot of little things that kind of built up to a head and Mr. Patler blasted into Commander Rockwell and there was a bit of hard feeling between the two men.

Q. What happened in the fall of '66?

Mr. Harrigan: I object to his characterization, he has some facts, what does "blasted" mean? What he essentially is talking about, I think he ought to testify as to that, that is the opinion, I read all of the letters and I'd be interested to know just what he is referring to.

Matt Koehl

The Court: I will let it come out by cross-examination.
Mr. Harrigan: All right.

page 1983 } By Mr. Hassan:

Q. I will ask it right now, what was this "blast" you were referring to?

A. There were a number of things brought out in it, are you referring to the one earlier in 1966?

Q. We are talking about early 1966.

A. There was something.

Q. First of all, where did the "blast" take place?

A. In written form.

Q. What was the nature of the "blast"?

A. Mr. Patler, among other things, thought that some of his—well, he was in charge of finances down there and they were turned over to another individual and he objected to this, he had some ideological differences based on racial grounds, there was a dispute throughout all of these, as a matter of fact, of stirring up antagonisms between the lighter and the darker members of the party and he felt that Commander Rockwell was taking the side of the lighter members, and I believe—well, this showed up both there and it showed up in the subsequent dispute.

Q. Did there come a time when there were any staff meetings, at which there was evidence of dispute,
page 1984 } any gathering of supervisors, or captains, or lieutenants?

A. Some of this came up at meetings of the officers that were held from time to time, they weren't formal meetings, they were informal.

Q. Informal meetings?

A. Right.

Q. Did you attend these meetings?

A. Yes, I did.

Q. Did you see any evidence of the animosity between John Patler and George Lincoln Rockwell?

A. Yes, I did.

Q. What did you see?

A. You bring up these various charges at the meeting and there were exchanges on a number of occasions between the two.

Matt Koehl

Mr. Harrigan: Your Honor, I wish he would descend to specifics, if he is going to.

The Court: I think it will be necessary for him to do that, now, Mr. Hassan is asking him specific questions, but he is getting rather general answers.

Mr. Hassan: On Mr. Harrigan's side of the specifics, Your Honor, I think it is just the nature of the witness, I don't think he intends to be general, I think he is trying to be specific, he has problems expressing himself that way, I don't think he means to be too general.

The Court: You will have to state facts.

Mr. Hassan: Give us examples of what you observed.

Let me lead you a little, at any of these meetings, was there any discussion about funds that were used for vacation instead of something else?

The Witness: This was touched off by the charge that John Patler made in a memorandum to the Commander and I was present at the time when Commander Rockwell and John Patler had it out in my presence, I was the only other party present at the time, and this was in April—excuse me, it was in March, preceding his transfer to Arlington and his dismissal.

By Mr. Hassan:

Q. Give us some of the exact words and discussions back and forth.

A. John Patler had accused Commander Rockwell of being a liar in the memorandum and Commander Rockwell took exception to this and he also accused him of being dishonorable in the memorandum and he took exception to this.

Q. Now, did Mr. Patler say in what regard he was a liar.

A. I think, as I recall, he was referring to the charge that he was stirring up dissension between the darker and lighter members of the party and he asked that Commander Rockwell admit that he had made a lie, that he had told a lie, and accordingly, he was a liar, and there was an exchange back and forth between the two individuals over this point.

Q. What was he referring to in regards to when he did express himself, in regards to Rockwell being dishonorable?

A. I can recall it, generally, I don't recall the specifics.

Matt Koehl

Q. You don't recall the specifics?

A. No, sir.

Q. Did there come a time when you heard anything concerning something that was fictitious or fake regarding the motorcycleist and Ku Klux Klan?

A. No, I didn't.

Q. Did there come a time when you heard anything in regard to a dispute in regard to the possibility of jail time in New York?

A. I believe there was a time when Commander Rockwell hesitated to go to New York because there was an impending charge out for his arrest and, as I recall it, the defendant wanted him to go on that occasion.

page 1987 } Q. The defendant did what?

A. As I recall, he wanted him to go on that occasion, I don't have any strong knowledge of it.

Q. Did you ever hear the defendant say it was dishonorable for him to sit in jail while he was needed down just for the sake of getting on TV?

A. No, sir, I don't recall.

Q. Now, prior to '66, from the time that you were associated with the Nazi Party, have you any knowledge of any build-up of animosity between Mr. Patler and Mr. Rockwell over the years?

A. Yes, sir, there had been a situation between them, this was prior to my coming to Arlington, at the time I came here, Mr. Patler was not with us in Arlington and this was as a result of an earlier discharge, and at the—in the summer of—

Mr. Harrigan: Your Honor, I would like to know if he was talking from firsthand knowledge?

The Witness: I am planning to—

Mr. Harrigan: I thought he said he wasn't even here when he came to Arlington, he wasn't here and learned that, something to that effect.

By Mr. Hassan:

page 1988 } Q. Were you a member of the party when Mr. Patler was discharged?

A. When was that?

Q. Were you a member of the party when Mr. Patler was discharged?

A. Yes, I was.

Matt Koehl

Q. Was that information disseminated to party members?

A. That he was discharged, yes, it was.

Q. When you came here, you knew about the situation?

A. Yes, sir.

Q. Did there come a time when you participated in any discussion in connection with his return to the party?

A. Yes, sir.

Q. At that time what occurred to show that there had been existing animosity?

A. There was considerable controversy among the party officers as to whether he should be allowed back in the organization, and these officers who had been here in Arlington at the time of his previous discharge were vehemently against his return, and I believe in the case of one officer, he came very close to quitting on that issue.

Mr. Harrigan: Your Honor, what has some other officer coming close to quitting got to do with this issue
page 1989 } of utterance?

The Court: I think we are getting pretty far afield, how far back in time does this go?

The Witness: In 1963.

Mr. Harrigan: '63, four years ago.

The Court: I think that is too far back to have any probative value.

By Mr. Hassan:

Q. I believe it does, Your Honor, this is a consistent course of conduct, which builds up into discharge and animosity and it falls into the exception of scheme, knowledge, know-how, and design. I am prepared to argue that if you care to have that argued.

The Court: I realize that the O'Boyle case would permit evidence going back in time considerably and leave it to the jury to determine its weight, but that generally relates to the utterances of the accused, and if you were talking about the utterances of other officers—

Mr. Hassan: I am prepared to show that what occurred in his first discharge was almost identical preperformance in build-up and in situations as was the build-up in the second discharge, and it was referred to in those exhibits which you read, Your Honor, by mention of names.

Matt Koehl

page 1990 } Mr. Harrigan: I haven't heard a single threat and there isn't anything in any of those exhibits, petty differences is all it is, and he hasn't said anything yet, and I am still waiting to hear it.

Mr. Hassan: This is what builds up to the threats, that you did hear that were testified to from the stand.

The Court: I take it then that you object to the line of questioning concerning the occasions in 1963.

Mr. Harrigan: Yes, Your Honor, I would object to basically the whole line, if it is relying on that correspondence which I read and there's supposed to be some underlying animosity—

Mr. Hassan: I don't want to argue it from the merits of the correspondence, if the jurors are not going to see it, Your Honor.

Mr. Harrigan: That is what he is saying, he is saying the same thing in the letter.

Mr. Hassan: He is saying what he has firsthand knowledge about, independent of the letters.

Mr. Harrigan: He hasn't said it as well as the letters did.

Mr. Hassan: That is why I wanted the letters in, I didn't expect you to object to the letters.

page 1991 } Mr. Harrigan: I think they clutter up the record.

The Court: Mr. Hassan, I will hear it if you want to argue it, my feeling is that the occurrence in '63, thus far, is pretty far afield to be *be* relevant and, furthermore, we are looking at the conduct of other officers, specifically as to this meeting, not Rockwell, not the defendant.

Mr. Hassan: I didn't quite get that impression, Your Honor, I got the impression we were getting the reactions of other officers between the kiss and make-up between Patler and Rockwell.

Mr. Harrigan: I would object, I don't know what bearing the reactions of other officers unnamed would have.

Mr. Hassan: It shows the degree of animosity.

The Court: If you want to argue it, I will hear you, my feeling is, it is too far back to be relative.

Mr. Hassan: I will skip the argument, it is getting late.

The Court: Objection sustained.

By Mr. Hassan:

Q. Mr. Koehl, what records are kept or have been kept dur-

Matt Koeh!

ing the time that you have been at 6150 Wilson Boulevard, in
regards to firearms?

page 1992 } A. Usually, the security office maintained
some kind of list of the weapons of individuals
and also those belonging to the party, with the registration
numbers and the make, etc.

Q. How frequently are inventories made?

A. I don't think it was too often.

Q. Do you know whether it was often or not?

A. No, it wasn't very often.

Q. Were you ever a security man in charge of keeping that
record?

A. No, I was not.

Q. Now, that you are in charge, do you have a record of
guns at 6150?

A. Yes, we do.

Q. When was that made?

A. I believe the latest one was made sometime following the
assassination.

Q. Prior to that, when was the last one made?

A. It had been quite some time, it could have been anywhere
from six months to several years.

Q. When a checkup was made, if a weapon was missing,
what was done about that?

A. That would be the responsibility of the
page 1993 } individual owner.

Q. The responsibility of who?

A. The individual owner or to the police.

Q. If a gun belonging to a party member was loaned to
another party member, would there be any internal action if
it was missing?

A. If that party reported it as having been missing.

Q. What type of internal action would be taken?

A. Well, actually, the procedures were rather loose, and
there would be some sort of check into the matter, presumably,
the person who owned the weapon would take the *initative*
and find out where it had gone.

Q. Now, were you familiar with Mauser Serial Number
9811?

A. By sight.

Q. By sight?

A. Right.

Q. Prior to the assassination, when was the last time you
saw it?

Matt Koehl

A. It had been several years, I'd put it in years that I had seen the weapon.

Q. You hadn't seen it in years, who had it when you did see it?

page 1994 } A. I never did, although I recognized this weapon because of its peculiar shape, I never associated it with any one individual in particular.

Q. Now, directing your attention to the 25th day of August, 1967, what did you do on that day, if you recall?

A. I did quite a few things, sir, specifically.

Q. Who was at the barracks that day?

A. Besides myself, there was Mr. Parsons, Donald Parsons, George Parker, and Robert Bruce, in addition to Commander Rockwell.

Q. Did there come a time when any of these individuals left there?

A. Left the party?

Q. Left the headquarters, the barracks?

A. Yes.

Q. Who left?

A. Mr. Bruce.

Q. Where did Mr. Bruce go?

A. He remained in the Arlington area.

Q. How did he leave?

A. He was given an official leave.

Q. Official leave?

A. That's correct.

page 1995 } Q. Did there come a time when anyone else left?

A. These mentioned?

Q. Yes.

A. No, sir.

Q. Did you leave?

A. No, sir.

Q. Were you at headquarters all morning?

A. Excuse me, sir, I think I am getting a mistake in.

Q. You are not listening to me, and you are trying to out-guess me, I wish you would listen.

A. What I thought by leaving—

Q. Depart from 6150 Wilson Boulevard.

A. I departed from 6150 Wilson Boulevard that morning.

Q. What time did you depart?

A. It was approximately quarter to eleven, give or take fifteen minutes.

Matt Koehl

Q. How did you depart?

A. I departed by automobile.

Q. How many automobiles were up there that day?

A. There was only one operable vehicle.

Q. What kind of vehicle was that?

A. It was an older model Chevrolet sedan.

Q. Was it the vehicle in which Commander
page 1996 } Rockwell was later shot?

A. That's correct.

Q. Now, who owned that vehicle?

A. I believe it was registered under the name of Frank
Draeger, I am not sure about that.

Q. Was anybody up there entitled to use a Georgetown Uni-
versity Dentist School sticker.

A. I don't know.

Q. Did that vehicle have one on it.

A. I wasn't aware of it.

Q. Do you know where Mr. Draeger got the vehicle?

A. No, I don't, I believe it was somewhere in the Northern
Virginia area, but exactly where, I don't know.

Q. When did he get the vehicle?

A. I believe it was earlier that year, I couldn't say for sure.

Q. Was it a used car when he got it?

A. Yes, it was.

Q. Where did you go in that car?

A. I left and I went to the residence of Douglas Niles, and
I later went to the main post office to pick up our mail, I be-
lieve I returned, I may have gone to our own post office, the
other post office where we have a locked box, I
page 1997 } don't believe so, I believe that was the only one,
the main post office.

Q. Did there come a time when you got a parking ticket?

A. Yes, sir.

Q. Where did you get that?

A. Out front of the Niles residence.

Q. What time was that, if you know?

A. I believe it was about 11:15.

Q. Did there come a time when you returned to 6150 Wil-
son Boulevard?

A. Yes, sir.

Q. What time did you arrive back there?

A. It was just about 11:30 or shortly past.

Q. When you arrived back there, who was at the barracks?

Matt Koehl

A. The individuals I named earlier, Mr. Parsons, Mr. Parker, Mr. Bruce, and Commander Rockwell.

Q. Had the man who left on leave returned?

A. Excuse me, sir, I'd better clarify that, I was referring to an official leave, where there is a change of residence. All of these individuals, to the best of my knowledge, were on the premises all that morning.

Q. They were there when you left and they
page 1998 } were still there when you came back?

A. Right, sir.

Q. When was the first time you saw Commander Rockwell that day?

A. I had seen him earlier in the morning, I had been to his room and discussed some work with him, he was working on a project and he discussed that with me.

Q. When you returned to the barracks, what did you intend to do?

A. Well, I intended to take the group, everybody mentioned, except Commander Rockwell, on the distribution of our paper, "White Power," to the National Press Building in Washington.

Q. Did there come a time when you did that?

A. No, sir.

Q. What time had you planned to do that?

A. Well, I had planned to do it as early as possible, when I had been out earlier that morning, I was hoping to get back soon, so I could take these individuals over for the distribution before 12:00 o'clock, not too much later, because we had hoped to reach the various news media before that time.

Q. When you came back, where was Commander Rockwell?
page 1999 }

A. He was still in his room.

Q. Did you make any phone calls?

A. No, sir.

Q. Was it permissible for the others who were there to make phone calls, with the exception of Commander Rockwell?

A. It was permissible, yes, sir.

Q. How many did they have?

A. Well there was one number and there are three extensions.

Q. And three extensions?

A. That's correct.

Q. What type of set-up is there, is this a set-up that has

Matt Koehl

a light when a line is busy, or is there no indication on any individual phone?

A. There is a light.

Q. So you know when the line is busy?

A. Right.

Q. After you arrived back, when was the first time you saw Commander Rockwell?

A. Just before we were getting ready to leave, I just left my room and was proceeding down the hallway, when Commander Rockwell appeared.

Q. At that time what did he have to say, if
page 2000 }

A. Well, he was just leaving his room and he indicated he wanted to use the car for just a few minutes, to take his laundry to the laundry mat.

Q. Did there come a time when he did take his laundry to the laundry mat?

A. That's right.

Q. What time was that, if you know?

A. It was about—just about ten minutes to twelve.

Q. About ten minutes to twelve?

A. Approximately.

Q. Did there come a time when you found out anything had occurred at the shopping center?

A. Yes, sir.

Q. Did you know which shopping center he was going to?

A. Yes, sir.

Q. How did you first hear about the occurrence?

A. We got—well, the duty officer downstairs, whoever answered the phone, called up on my extension saying that they had heard from a newsman who claimed that Commander Rockwell had been shot outside of the realtor's and who wanted the story, and I guess they just hung up on him, they thought it was a prank and I did, too, at the time.

Q. Did you receive any more calls?
page 2001 }

A. Yes, sir.

Q. Who from?

A. Well, they were also from newsmen.

Q. Go ahead.

A. Within the next, about the next four or five minutes, we got two or three more calls.

Q. Did there come a time, then, you did anything about the phone calls?

Matt Koehl

A. Yes, sir, almost all of these calls sounded alike, the information they were seeking, and it sounded too consistent to be a hoax, so I became a little concerned at this point, and I asked Mr. Parsons and Mr. Bruce to go down and just to check it out.

Q. Did they do that?

A. Yes, sir.

Q. Did they come back and tell you what they saw?

A. Yes, sir.

Q. Did anybody else come back up there?

A. No, sir, just the two had gone down, they came in to report.

Q. Were any of your members of affiliates, as far as you know, present at the scene.

A. At that time?

page 2002 } Q. Any time from the shooting on.

A. No, sir.

Q. Did you say no?

A. No, they were all in the barracks, and then they went down and came back.

Q. There are some who don't live in the barracks, are there not?

A. That is correct.

Q. Did any of them tell you they were present at the scene at any time before you sent Bruce and Parsons down there?

A. No, sir.

Q. Did there come a time when any members arrived at 6150?

A. Yes, sir.

Q. Who was that?

A. Let's see, there was Dr. Pierce that came up later that afternoon.

Q. What time did Dr. Pierce get there?

A. I would guess it would be about 3:00 or 4:00, it was later in the afternoon.

Q. About 3:00 or 4:00 in the afternoon, now, had you talked to him earlier?

page 2003 } A. I called him on the scene.

Q. What time did you call him?

A. It was—it must have been about between quarter after twelve and 12:30.

Q. Did there come a time when you called Mr. Lloyd in Richmond.

A. I don't recall.

Matt Koehl

Q. How many phone calls did you make that day?

A. I think about—I don't think it was more than about three or four, more like three.

Q. Who were the three that you called?

A. I notified our headquarters in Los Angeles and Dallas.

Q. How did you happen to call Dr. Pierce when your other two calls were to headquarters?

A. Well, we kind of short handed there and I needed—I just needed help, I mean this was a—just a blast and I figured he was a competent man to help supervise some of the details. There were newsmen running all over the place, it was very hectic.

Q. Did you ask him to come up?

A. Yes, I did.

Q. Did you see him when he arrived?

page 2004 } A. Yes, I did.

Q. Where did you see him when he arrived?

A. Right there.

Q. Outside or inside the headquarters?

A. I am reasonably sure it was inside.

Q. Then you didn't see how he arrived, what kind of a vehicle, or with or without anyone?

A. No, sir, I don't recall that specifically.

Q. Do you recall seeing Mr. and Mrs. Lloyd that day?

A. I may have, on that Friday and the following Saturday, I saw some people, I definitely saw them that weekend, whether it was specifically that Friday afternoon, I don't recollect.

Q. Did Dr. Pierce stay at 6150 Wilson while he was here?

A. Yes, he did.

Q. Did the Lloyds stay there at 6150 Wilson?

A. I don't recall.

Q. Now, directing your attention to the period between April and August 25th, did anything unusual occur in the headquarters?

Mr. Harrigan: Are you referring to June 27th?

By Mr. Hassan:

page 2005 } Q. April 4, I am referring from April 4 through to August 25th, did anything unusual occur at the headquarters?

A. There has been one attempt made on the Commander's life about a month or so earlier.

Matt Koehl

Q. A month or so earlier than what, Mr. Koehl?

A. Than the assassination, it may have been longer, I don't recall the exact date?

Q. You don't recall exactly, but sometime a month or so ago, there had been an attempt on the Commander's life?

A. That's correct.

Q. Where did that occur?

A. That occurred at the foot of the driveway, just off Wilson Boulevard.

Q. What time of the day or night?

A. That was at 3:00 or 3:30 in the afternoon.

Q. Where were you, sir?

A. I was inside the building at that time.

Q. Did there come a time when you went out at that time?

A. Yes, sir.

Q. What did you do?

A. Well, I went on down there, on down the road, there had been a report that somebody was throwing
page 2006 } cherry bombs, so several of us went down to run
whoever it was off the property.

Q. Since the 25th of August, 1967, has there been any unusual incidents connected with gunfire at the headquarters?

A. I don't believe so.

Q. Has there been any incidents connected with cherry bombs?

A. No, sir.

Q. Now from the period of April 4th to August 25th, were there any phone calls of a threatening nature?

A. Yes, there were.

Q. How many?

A. I couldn't give an account, because different persons answered the telephone. I knew there were definitely some to Commander Rockwell.

Q. Now, from August 25th to the present time, have there been any telephone threats to headquarters?

A. There may have been a few of a general type.

Q. Were there or were there not. Mr. Koehl? You have been in charge since then, haven't you?

A. Yes, sir.

Q. They would be reported to you, would they not?

A. If they were serious enough.

Q. How serious does a threat have to be to be
page 2007 } serious enough?

Matt Koehl

A. Over the years we have gotten so many threats, we barely keep track of all of them, but we do try to keep a record and also to notify the police in such instances.

Q. May we suspend direct examination now, and resume on Monday morning, Your Honor? I have a feeling I have forgotten something, and I just can't recall, I'm just too tired.

The Court: Suppose I give you a recess and let you run down to the office and look at your notes and, otherwise, recuperate, if you resume we can get direct examination over at this point, I don't think it would be wise to start cross-examination today.

Mr. Hassan: Your Honor, I prefer to rest and think about it, I don't imagine there is much more, I must have exhausted the subject pretty well, but my mind is just getting blank now, this is the first time I've had to refer to a transcript to remember what I want to do.

The Court: All right, Mr. Koehl, let me ask you something, have you told us all you know about this previous attempt on Mr. Rockwell's life, did it just take the form of a report to you, that somebody had been throwing cherry bombs down there, or was there something more serious in page 2008 } that?

The Witness: That is the way the report first reached me, the person who was driving the car came racing up the hill and came up to my office and said that there was some buys on the property throwing cherry bombs, so I grabbed a lead pipe and accompanied him down the driveway and we didn't see anybody. It was a few minutes later by the time he had come up and I had gone down and so it was only later we discovered that it had been a bullet.

The Court: You later discovered there had been a bullet fired there?

The Witness: Yes, by the crease or the dent on the top of the car.

The Court: Was any part of that bullet ever recovered, to your knowledge?

The Witness: I don't know whether it was or not, I have never heard that it was.

The Court: Was that all that was ever found out about it, then, just a crease on the top of the car?

The Witness: Yes, sir, it was examined by the police and they concluded it had been a bullet fired.

Matt Koehl

By Mr. Hassan:

Q. Let me ask you a few questions on that, who was with the Commander at the time this happened?

page 2009 } A. John Arnette.

Q. Did the Commander wait there for someone to come or did he do something else?

A. When he was at the—he pulled into the driveway, coming in from an errand and there was an obstruction in the way of the driveway, there was a grocery cart, I believe, and a mail box was placed down on the driveway itself, to form an obstruction.

The car was stopped and I believe either Mr. Arnette or the Commander got out to move the obstruction and it was at this time that the bullet was fired.

Q. Did the Commander chase anyone?

A. Yes, he did.

Q. He wasn't there when you got there, was he?

A. No, he wasn't.

Q. He came back shortly thereafter, is that correct?

A. That's correct.

Q. What did he tell you then, if anything?

Mr. Harrigan: Your Honor, I think the fact of a previous attempt can be entered.

Mr. Hassan: I didn't hear you, Mr. Harrigan, I am sorry.

Mr. Harrigan: I think the fact of a previous attempt—may we approach the bench?

* * * * *

Conf.

1 /9/67

page 3 }

* * * * *

The Court: Did this come up at the preliminary hearing?

Mr. Hassan: No, he was shot on the 27th day of June, 1967. Two men were chased by Rockwell and the other man in the car came up to the house and ran back. The police investigated and Rockwell was never able to identify him.

Mr. Morris: He said in his report to the commanding officer and to the Nazi Party that he saw

Matt Koehl

12/9/67 both men and couldn't recognize either of them,
page 4 } that he chased both of them into the woods, but he
did not recognize either one of them as ever having
seen them before.

Mr. Hassan: And there is one conflict on that. He did state to one man, according to our records, that he thought one of them looked like The Holy Father, but he is the only one.

Mr. Morris: We will put The Holy Father on the witness stand. The Holy Father is almost blind.

The Court: If there's nothing that involves the defendant with that testimony, it seems to me there is no point in pursuing it.

Mr. Morris: It might be exculpatory.

Mr. Hassan: How fantastic can you get.

The Court: You all do as you see fit about it.

Do you have any further questions at this time, Mr. Hassan?

Mr. Hassan: I would like to recess at this time and pick up Monday on it.

The Court: All right.

Refer to Page 2011, line 12

(Discussion out of the presence of the jury.)

Conf.

12/9/67 Mr. Harrigan: Your Honor, I would like to re-
page 5 } quest Mr. Koehl to bring his other records down to
the Court with him, the other files and other party
members when he comes Monday.

The Court: It sounds like that would require a truck. I think you are going to have to be pretty specific.

Mr. Hassan: I think he should be required to specify by name what he wants.

The Court: I do, too. You can't just issue a general demand.

Mr. Harrigan: I want Niles, his wife, Peggy, Parsons, Robert Bruce. You said that Bruce was on leave right now, didn't you?

The Witness: He had gone on leave. He's no longer with our party.

Mr. Harrigan: Bruce. Do you have a file on Dr. Pierce?

The Witness: I have something, yes, I do.

Mr. Harrigan: Bring that and your own.

Matt Koehl

The Witness: Okay.

Mr. Harrigan: Vidnjevich, do you have a file on Vidnjevich?

Conf. The Witness: Right.

12/9/67 Mr. Harrigan: Have you got a file on Lloyd?

page 6 } The Witness: Yes.

Mr. Harrigan: Have you got one on Barbara von Goetz?

The Witness: I may.

Mr. Harrigan: Redfield?

The Witness: Yes.

Mr. Harrigan: Parker?

The Witness: Yes, sir.

Mr. Harrigan: Do you have a file of any threatening letters? Do you have a correspondence file where you put those in?

The Witness: We have no current one. We used to have one up to date.

Mr. Harrigan: Do you have financial records of contributions? I am not so much interested in who sent them. I am interested in how much. Do you keep that kind of records?

The Witness: I don't see how this has any bearing on it.

Mr. Harrigan: You are the beneficiary of the estate, aren't you?

The Witness: That's right.

Conf. Mr. Hassan: What has that got to do with it?

12/9/67 Mr. Harrigan: I don't know how much money is
page 7 } involved.

Mr. Hassan: You are going to have to put him in a place where a motive will do you some kind of good. I tried to get those records one time myself.

The Court: I don't believe the financial records have anything to do with the case.

Mr. Harrigan: Do you have a file on the Surreys?

The Witness: I believe I do.

Mr. Hassan: I am going to object to any files being asked for on people who are not going to be here to testify. I don't think we want to go on any waving the files of people who are not even involved in this case.

Mr. Harrigan: I think who is involved in this case is the issue here.

The Court: Let the files be produced. Whether anything in them turns out to be relevant or not, I don't know and I can't

Matt Koehl

rule on them until I proceed. These people have been mentioned in the case and most of them have testified, so that is all right, but internal party affairs like finances and what-not, I don't think has anything to do with it.

Mr. Harrigan: Finances have been the motive in more than one particular crime, Your Honor.
Conf. 12/9/67 As a matter of fact, it has been the motive in a page 8 } great many crimes. In a lot of larcenies, money has been the motive.

The Court: Would it be your purpose to show that someone else had a motive and to negate the motive that the defendant is supposed to have?

Mr. Harrigan: Yes, Your Honor. It may show through these files that many people have motives which were much stronger than what this particular motive is.

Mr. Hassan: You are going to have to show opportunity before you get into any of those motives.

Mr. Harrigan: I can show it. That goes on the assumption that one man did this, Mr. Hassan's theory. I am not sure that is our theory. It could have just as easily been a conspiracy.

The Court: Then the only thing that you would be concerned with would not be the party finances, but Rockwell's estate, wouldn't it?

Mr. Harrigan: Yes.

Mr. Morris: He is the beneficiary of the estate.

The Court: Has that been probated?

Mr. Harrigan: The will has been filed for probate, is that correct?
Conf. 12/9/67 The Witness: Yes.

page 9 } Mr. Hassan: Has an inventory of appraisal been filed?

The Witness: No, sir.

The Court: Has an executive qualified?

The Witness: I have been named executive.

The Court: I think you can examine him as executor if you wish to do that, but that would not involve his producing a party's financial record.

Mr. Harrigan: The way Rockwell ran it, he was the party. The money came to him. He did pretty much as he pleased. I don't know whether Mr. Koehl operates on the same system or not.

Mr. Hassan: We are getting awfully far afield from the case we came here to try.

Matt Koehl

The Court: Without some showing of relevancy, I don't see how I could permit you to go through the finances of the party. You can cross-examine this witness or any other about their financial relationships with the deceased and it may be that, in his traditional capacity as executor, you might be able to find out about the estate of the decedent. If he has any files on that, that can be produced, but as to the internal

party financial records, I just don't see that that Conf. is relevant without some further showing.

12/9/67 } Furthermore, about this matter of establishing
page 10 } motives in other people, I realize that you have a right to show the jury that other people would have had motives, but in a case of a figure like George Lincoln Rockwell, there are likely to be so many people who would have had a motive that it becomes a bit dilute and the witness has already testified that threatening telephone calls were such a common occurrence that they got to be almost routine. The activities of that party were such as to have enraged a great many people and a lot of that might have been focused on Rockwell himself. I certainly can't permit you to canvass the whole nation to find out people who might have liked to have taken a shot at him. It's got to be a lot more focused to be relevant to the case. It is an unusual situation because he was a public figure and one who received unusual animosity by his public endeavors.

Mr. Harrigan: One thing about the public record, I think there were some members who gave fairly large sums to one member to which Rockwell took the money and he did not form what he promised and these are party members or ex-party members. The only thing that I am really interested in is whether he kept any record at all of what he took.

12/9/67 } Mr. Hassan: He's been keeping out this busi-
page 11 } ness of what the controversy is about by objecting to all this evidence and now he is going to try to put it in through the back door. Every one of them went up there, even Patler himself and gave away what he owned, a printing press. Every one has done this and every one of them could have animosity, but if we are going into what the merits of it are, then I want these letters in because we are going to start weighing as to people's reasons or motives. We have got some weight. I'm going to bring up some more files.

Matt Koehl

The Court: You can develop that line on cross-examination on Monday. If something turns out to be specifically relevant to the case, I will let you proceed but I won't issue a blanket order now requiring the party's financial records to be disclosed without some connection.

Mr. Hassan: This is with the consent of the witness, Your Honor. I am going to object from this unorthodox procedure to get an oral *duces tecum* to get the file and so forth. We have been through this several times with no objections.

Mr. Harrigan: He already said he would produce it.

Mr. Hassan: He hasn't said any such thing. He hasn't said any such thing at all about his rights.

The Court: You have asked for personal correspondence files, papers relating to specific individuals. He says he has files of this kind.

Conf. 12/9/67 } Mr. Harrigan: This relates to letters from other people to Rockwell and the relations that they have had. Some of them are fairly strong.

The Court: Do you object to producing those?

The Witness: Well, some of this we could keep going to next year at this time if we start getting into all the correspondence we have, even taking these few here and I have already stated, for example, I see threat letters here and we don't have any current threat letter files.

Mr. Harrigan: Then you don't have to produce any, obviously.

Mr. Hassan: He told him that before on examination but he still comes right on and asks him again.

Mr. Harrigan: He might have got some between the last time I talked to him and now, when he got the phone call, it seems like he might have got a letter or two.

Mr. Hassan: If you sent it, he probably got it! Well, I mailed it!

The Court: I will consider that the Commonwealth has received none and a sufficient showing is being made to produce those—

Conf. 12/9/67 } Mr. Hassan: If Your Honor please, I think that violates the statute. The statute requires notice to the adversary party. It is not in my records that it be produced and it is not in the Commonwealth's records. I think he is entitled to notice and representation as a witness of the Commonwealth. I think he is entitled to notice and entitled to counsel. I don't know what

Matt Koehl

kind of fishing expedition this is going to be here, but I think he ought to have legal advice and not from me, because my advice would be to him that he wouldn't produce them.

The Court: Will you tell me, as I go through these people one by one, what materiality they have to the case, other than just fishing in the hopes that something might turn up. Bruce and Parsons have been testified to as people who were present at the barracks that morning.

Mr. Harrigan: That is correct.

Mr. Hassan: So you don't have any resignation from them. They were present there at that time. They might have resigned twenty years ago, but that is certainly not relevant to this case.

The Court: Vidnjeovich has testified. Dr. Pierce has been repeatedly mentioned. Does either side anticipate using him as a witness?

Conf. Mr. Harrigan: Dr. Pierce? He's been mentioned 12/9/67 as a man that was called just within a very few page 14 } minutes after Rockwell was shot, by this witness, and has also been mentioned in connection with another witness who testified yesterday, and our position on this is there is some conflict between the testimony of the two witnesses.

Mr. Hassan: There is no conflict.

Mr. Harrigan: We'll see.

Mr. Hassan: We have seen. It is right there in the transcript. It's a lot of fantastic boloney.

Mr. Harrigan: I've got it in the transcript right here, too.

The Court: You still haven't told me what is the materiality. What is the materiality of a file on Dr. Pierce? What would that tend to prove in this case?

Mr. Harrigan: Dr. Pierce, apparently, was in touch with the person who owned this gun within minutes, according to the testimony after this last issue.

Mr. Hassan: Dr. Pierce was fifty miles away and the person who owned the gun was one hundred ten miles away.

Mr. Harrigan: That is what he told you.

Mr. Hassan: I know where Richmond and Fredericksburg are. I have been there.

Conf. The Court: Niles and Lloyd. Who is BVG?

12/9/67 Mr. Harrigan: That is the lady who has the page 15 } initials on all these papers that nobody knows anything about, and the dates.

Mr. Hassan: Who is that?

Matt Koehl

Mr. Harrigan: BVG, Barbara von Goetz.

Mr. Hassan: Have you subpoenaed her?

Mr. Harrigan: No.

The Court: I see no reason to ask for that. What is Redfield's connection with the case?

Mr. Harrigan: I understand he was there that day.

The Witness: No, he wasn't.

The Court: That wasn't his testimony.

Mr. Hassan: Redfield wasn't even down there that day.

Mr. Harrigan: Maybe I am mistaken.

The Court: Koehl, Parsons, Parker, Bruce.

Mr. Harrigan: Isn't Redfield the quartermaster or something?

The Witness: He is not a quartermaster.

The Court: What connection does Pace have?

Mr. Harrigan: He is the soldier who testified yesterday.

Mr. Hassan: Who has been released.

Conf. The Court: Mr. and Mrs. Surrey, what were 12/9/67 their connection?

page 16 } Mr. Harrigan: I don't know what their connection is right now, but they used to be rather large contributors to this organization and they also got the book that Rockwell was writing. He had finished it the day that he was shot, apparently.

The Court: Is Peggy Niles related to Douglas Niles on this list?

Mr. Harrigan: His wife.

The Court: Then, the last name looks like George Ware, W-a-r-e?

Mr. Morris: He owned the property in Spotsylvania.

Mr. Harrigan: The only connection he would have would be that he owns the property in Spotsylvania and has been down there on the premises down there.

The Court: I will let the records be produced as to these parties, other than BVG, Redfield, and George Ware. There has been something shown in the case which demonstrates some materiality, but of course, I don't know until I see the files and whether there is any reason to allow them to be introduced in evidence. I will let you cross-examine him with these files in his hand, but I am not entirely

Conf. sure that I am going to permit you to look at the 12/9/67 files either, until you develop something on cross-page 17 } examination that proves them material to the case. I won't decide that at this point.

Matt Koehl

We will require to bring these files here, Mr. Koehl, if you have them. If such files exist, bring them Monday.

I gather, you say, there isn't a file of threat letters?

The Witness: No, sir, no specific file. There's one some four or five years ago.

The Court: Are there any threat letters there that have been received in the last two years?

The Witness: Yes, there are.

The Court: Were they threats against Rockwell?

The Witness: Most of them were generally. They're either against him specifically or couched in general terms.

The Court: Where would they be filed?

The Witness: They would be filed anonymously.

The Court: You mean just a file called anonymous, or what?

The Witness: Anonymous, right.

Mr. Morris: They didn't sign their names?

The Witness: They came from all over the country.

Conf. try. The Court: Do you want to see them?

12/9/67 page 18 } Mr. Harrigan: Right.

The Court: All right. Bring that anonymous file.

Actually, I would think that if you keep that in any time sequence, that the last two years would be the only material areas of threat letters.

Mr. Harrigan: We could do this for him, if he likes. We can go up there.

The Court: That is perfectly all right.

Mr. Harrigan: And he can show us the files and he wouldn't have to carry them down here.

Mr. Hassan: If they are going to be able to go through a file, Your Honor, I want to be able to go through it, too, because if they have a right, I have got a right. I prefer they be brought down here.

The Court: That is up to Mr. Koehl. If he doesn't have to produce them here until Monday, if he wants to go through them with counsel, that is his privilege. He can do so, but he doesn't have to talk to them, but if you wish, Mr. Koehl, you may.

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Mathias Koehl

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page 2014 }

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The Court: You gentlemen ready for the Jury?

Mr. Hassan: Ready, Your Honor.

Mr. Morris: Yes, Your Honor.

The Court: Call the Jury.

Whereupon, MATHIAS KOEHL, resumed the stand, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION (resumed)

By Mr. Hassan:

Q. On Saturday you testified that in the morning you were out in the car and you went to the home of Doug Niales, what was the occasion for going there?

A. I was in the area. I was headed toward the main Post Office and my specific occasion for going there was that we had a few extra tickets to a film showing, I believe it was the next evening, it was a Saturday evening, and I wanted to see whether both Mr. and Mrs. Niales wished to attend the movie.

Q. And when you say we had some tickets, what do you mean by that?

A. Well, we purchased some—the party or party staff at 6150 Wilson Boulevard, we had about a half
page 2015 } dozen, between six and ten tickets.

Q. Did you see Mr. Niales at that time?

A. No, I did not.

Q. What did you do then?

A. I stopped by and discussed the film the next evening I believe. Mrs. Niales called her husband then at his place of employment to find out whether he wanted to go to this movie and I had a cup of tea and left.

Q. Now, was Mr. Niales a member of the American Nazi Party?

A. No sir.

Q. And was he a frequent visitor at the barracks at 6150 Wilson Boulevard?

A. Not frequently. He came over occasionally.

Mathias Koehl

Q. Was he a welcomed visitor?

A. Yes sir.

Q. Now, was there an itinerary kept at the barracks of the whereabouts of the Commander when he was on trips, Commander Rockwell?

A. Yes. Usually there was some loose sort of itinerary, an account of the general location of which he would be going to.

In other words, in the city area or the general
page 2016 } location on trips that were cross country.

Q. And does the American Nazi Party keep files on its individual members and ex-members?

A. We try to collect a record, yes sir.

Q. And do you have a record on Douglas Niales and his wife?

A. Yes sir.

Q. And was she ever a member of the Nazi Party?

A. Yes, she was.

Q. What was her capacity?

A. Well, she did—she was part of our staff. She did secretary work, clerical work, that sort of thing.

Q. When did she become affiliated with the Nazi Party?

A. The first time she was in Washington.

Q. The State of Washington?

A. That's correct, sir.

Q. And then did there come a time when she came here to Arlington?

A. Yes sir.

Q. Where were they affiliated with the Party in Arlington, what address?

A. The Party location, sir?

Q. Yes.

page 2017 } A. We were at 928 North Randolph at that time.

Q. Did there come a time when she was dismissed from the party?

A. No sir. She resigned. I believe it was in June of 1966. I believe it was last year.

Q. And you said Douglas Niales never was a member?

A. He was a member, yes sir.

Q. He was a member?

A. Yes sir.

Q. And was he ever dismissed from the Party?

A. He resigned, I believe, on the same day as his wife.

Q. Did he come here from the State of Washington?

Mathias Koehl

A. No sir.

Q. Where did they meet, if you know?

A. They met here in Arlington.

Q. Now, is there maintained a file on threats against any member of the Party?

A. Not at the present time. We have no specific file of threats. The worse threats, the more overt ones are usually turned over to the authorities, the F.B.I. or Postal authorities. Well, in the overt cases they usually go to the Post Office Inspector.

Q. And on the minor threats, what do you do with those?

A. Usually they're filed, most of them, almost
page 2018 } all of them are anonymous so they go to an
anonymous file.

Q. Now, directing your attention to a threat or an attempt on George Lincoln Rockwell's life in June of 1967, do you know the date, sir?

A. I'm not aware of the exact date.

Q. Does the Party have an investigator file on that episode?

A. No sir. We don't have any specific file now.

Q. And did the Party make an investigation of the August 25th, 1967 episode?

A. There was no formal investigation, no sir.

Mr. Hassan: I have no further questions, Your Honor.

CROSS EXAMINATION

By Mr. Harrigan:

Q. You say that you had no one make any investigation of the August 25 shooting of Rockwell?

A. There was no formal investigation by the Party.

Q. I didn't ask you that. I asked did anyone make an investigation?

Mr. Hassan: You didn't ask him that. You asked did he have any investigation made.

By Mr. Harrigan:

page 2019 } Q. Do you know Mr. Vincjevich?

A. Vincjevich? Yes sir.

Q. What was his capacity in this August 25 incident? Did he investigate anything?

A. I don't know.

Mathias Koehl

Q. You don't know?

A. I have no knowledge of it.

Q. In other words, if he had, you didn't order it?

A. That's correct.

Q. So you were not aware of any of his activities during the investigation if he made one?

A. I'm not sure I understand what you mean by investigation. What we've tried to do is cooperate with the police in their investigation but, as I say, we have not had any formal investigation by the Party because that's not our scope.

Q. Now when did you become a member of the Nazi Party?

A. It was in December of 1960.

Q. And you've been with them from 1960 up to the present time?

A. That's correct.

Q. Now, on the morning of August 25 you stated that there were five people up at that Nazi Headquarters, is that right?

A. That's correct.

page 2020 } Q. That would be Rockwell, right?

A. That's correct.

Q. Was Barbara von Goetz there that morning?

A. I don't recall.

Q. Do you know who she is?

A. Yes, I do.

Q. Who is she?

A. She had been doing secretarial work for Commander Rockwell.

Q. All right.

And yourself and Robert Bruce, right?

A. Right, and Donald Parsons.

Q. This Robert Bruce, you made a statement that he is on leave or something, did you say that?

A. He went on leave. I don't have the exact date but I believe it was sometime in September.

Q. I see.

So I take it—is he still on leave?

A. No he isn't.

Q. When in September did he go on leave?

A. I believe it was the latter portion. I don't have the exact date. I could get it if it were necessary.

page 2021 } Q. Is he still in good standing with the Party?

A. He's no longer a member of this organization.

Mathias Koehl

Mr. Harrigan: Could I have this marked?

(Whereupon, Defendant's Exhibit No. F was marked for identification)

By Mr. Harrigan:

Q. Did you bring a file down on Robert Bruce?

A. Yes I have.

Q. Would you show me the dishonorable discharge he received?

The Witness: Your Honor, I have it here. I was wondering about the right of defense to insist on having this. I can get the date if he wants it.

Mr. Harrigan: I've got the date, the 13th of October, Fuehrer year 78, that's your date. Do you have the document?

The Witness: I have it.

By Mr. Harrigan:

Q. Would you produce it?

The Court: Now what is your purpose in this, Mr. Harrigan?

Mr. Harrigan: He's trying to imply or did page 2022 } imply that this Mr. Bruce was on leave and has left the Party and the fact of the matter is that the 13th of October of this year Robert Bruce was given a dishonorable discharge by Mr. Koehl, himself.

Mr. Hassan: Two things I would like to object to, Your Honor.

Mr. Harrigan is continually standing in front of me when talking to witnesses; and secondly, the question he asked this witness was directed to a specific date and not to any subsequent date. The question he was asking was directed to August 25 and then he wants to know where he is now. He said he had gone on leave but was not on leave now. He's trying to imply he testified to something he did not testify to.

The Court: Well, it does seem to me that what he asked him was first, was he on leave, did he go on leave; and secondly, was he still on leave; and finally, the question was asked is he a member and the answer was no, he's no longer a member of that Party now and that has raised the thinking which you need to impeach—I gather you disagree with everything he said.

Mathias Koehl

Mr. Harrigan: I don't agree. He merely said the man went on leave but the fact is Robert Bruce was thrown out.

The Court: He said he was no longer a member and as I recall, he said that on Saturday, too.

Mr. Harrigan: He said in direct, as I understand his testimony was, that he was on official leave and he left it at that.

Mr. Hassan: He did not. He was asked if he was a member.

The Court: If the purpose is to impeach him, you can do that.

By Mr. Harrigan:

Q. Did he receive a dishonorable discharge?

A. That is correct.

Mr. Hassan: Before he testifies to it, I think I ought to see it. This is not the first time they've done this.

If Your Honor please, I'm going to ask that the remarks concerning dishonorable not be mentioned.

Mr. Harrigan: There it is—

Mr. Hassan: (Interposing) It says discharge and it says restricted.

Mr. Harrigan: It says type—what does that say?

Mr. Hassan: It says type—it's not a dishonorable form. Don't start misleading the witness. Let him have it. Let the Jury have it. There is nothing on there which indicates dishonorable.

page 2024 } Mr. Harrigan: Then I would like to admit this into evidence and let the Jury read it.

Mr. Hassan: No objection to it going into evidence at all.

Mr. Harrigan: If that doesn't say dishonorable, I don't know what does.

The Court: Well, you have identified this as—this came out of your file, I take it, and not the witness' file.

Mr. Harrigan: It came out—it's just a copy of what they had. That is a true copy of his dishonorable discharge (showing to witness).

The Witness: It appears to be.

Mr. Harrigan: You can compare it with your original if you have to be sure.

Mr. Hassan: If he has to, he may not have to.

Mr. Harrigan: I would just as soon send the original into evidence.

Mr. Hassan: Sure you would.

Mathias Koehl

The Court: I take it that you don't object. You mentioned a moment ago that you wanted the Jury to see it.

Mr. Hassan: Yes sir.

By Mr. Harrigan:

page 2025 } Q. Is that it (indicating)?

A. I would say it is.

Q. All right.

Mr. Harrigan: I would like to introduce this into evidence.

The Court: It will be admitted.

Now, what was the last Defendant's letter used.

This will be Defendant's F.

(Whereupon, Defendant's Exhibit F was entered into evidence.)

By Mr. Harrigan:

Q. What year does that say on there?

A. This was this year.

Q. What does that YF78 mean?

A. It's a Party date. It's the date of the birth of our leader.

Q. It means the year of the Fuehrer, is that right?

A. Yes.

Q. Which is this year?

A. Right.

Q. Now, John Patler never got a discharge, did he, like this?

page 2026 } A. No, that's true.

Q. All right.

Now, going back to the 25th of August, how many cars did you have available to the people at Nazi Headquarters on that day?

A. There was only one operable vehicle apart from the camper that we had which wasn't being run.

Q. Now, the camper was not operable, is that what you're saying?

A. It hadn't been driven for weeks.

Q. It had a busted seal in the wheel bearing, didn't it?

A. It could have.

Q. So you couldn't drive it?

A. That's possible. I'm not aware of the condition. It was just sitting there.

Q. All right.

Mathias Koehl

Now, the car that was available was what year and what make?

A. It was an older Chevrolet, the exact year I wouldn't know.

Q. A 1958?

A. That sounds reasonable.

page 2027 } Q. Now, what time did you get up that morning?

A. I believe it was about 7:30.

Q. And was Rockwell there and still asleep when you got up?

A. I don't know.

Q. All right.

Now, did there come a time when you left that morning?

A. Yes sir.

Q. What time did you leave?

A. I may have gone—I believe I went to get the mail earlier in the morning from the Preston King Station. That probably was around 9:00 o'clock.

Q. That was about 9:00 o'clock?

A. Probably. Between 9:00 and 9:30. Possibly a little before 9:00. Within the space of about fifteen minutes.

Q. Now, when you left, was there any laundry in the car?

A. I believe there was.

Q. And did you notice it there?

A. I noticed the laundry in the car, whether it was on a subsequent trip or not, I don't know, but I believe I did notice it at that time.

Q. And you knew it was Rockwell's laundry?

page 2028 } A. Not exactly. I presumed later that that was his laundry but as far as exactly whose it was, I didn't have any knowledge.

Q. All right.

Now you say you left—I believe you left about 9:00 and went to a Post Office, is that what you said?

A. Right, the Preston King Station.

Q. And did you come back to the barracks?

A. Yes.

Q. And did you then go out again?

A. Later in the morning, yes sir.

Q. What time did you arrive back to the barracks after this first pick up of mail?

A. I couldn't have been gone more than about fifteen minutes, ten or fifteen minutes.

Mathias Koehl

Q. Now, do you recall testifying September 29 in this Court House, do you recall testifying in this Court House on that date?

A. I did testify earlier.

Q. And you were asked at that time:

“Question: Did you know whose laundry it was?”

And your answer was:

page 2029 } “Answer: It was Commander Rockwell’s
laundry all rolled up.”

Mr. Hassan: Take the next question to see what it refers to.

The Court: Well, it doesn’t seem to me to be a contradiction. He just said now that he doesn’t think he knew whose it was at the time but later by hindsight.

By Mr. Harrigan:

Q. When did you develop that hindsight?

A. You misunderstood me. What I’m saying now is, when I went to the Preston King Station, I did not particularly associate the laundry as being the possession of Commander Rockwell, although I did tend to later on in the morning. I just assumed it.

Q. Later that morning?

A. Right. When I saw it the second time.

Q. Now, what time did you get back from that first trip then?

A. It couldn’t have been past 9:30.

Q. Now, did you have an occasion to talk to anybody or call any old party members during that first trip?

A. During the first trip?

Q. That’s right.

page 2030 } A. No sir.

Q. So you came back about 9:30 and was everybody still at the barracks that was there when you left?

A. Yes, everybody that I mentioned earlier.

Q. And from 9:30 how long was it before you left again?

A. At least an hour, probably a little bit longer.

Q. So what time did you leave the second time?

A. It was about a quarter to eleven, ten-thirty or quarter to eleven.

Mathias Koehl

Q. And what was the purpose of your leaving the second time?

A. I was going to our other mail box at the main Post Office and I also mentioned that I wanted to discuss the matter of the tickets, the extra tickets with the Niales.

Q. Do you usually pick up the mail or does somebody else do that?

A. At the present time, I don't, but I frequently did at that time.

Q. Was it one of your duties or one of somebody else's?

A. It was a sort of fluctuating thing. Somebody got the mail.

Q. Now, when you left about ten-thirty or quarter of eleven on the 25th, had you intended to stop at the Niales house before you left?

A. Yes I did.

Q. Did you have a phone at the barracks?

A. Yes, we do.

Q. Did you know whether or not Niales was working during the day or not?

A. His hours were kind of vague. Sometimes he was home in the mornings and sometimes he wasn't. It fluctuated.

Q. Was there any reason why you didn't just call him and convey that invitation to him?

A. I had the tickets there and it was a matter of the transaction. I mean if they wanted to buy and pay me for them right away, it was fine.

Q. All right.

Now, when you left, did you go right straight to the Niales house?

A. I believe so.

Q. Who was there?

A. Mrs. Niales.

Q. Peggy Niales?

A. That's correct.

Q. Now, how long was she a member of the Party?

A. I believe she joined in November 1965 and she was a member for about seven or eight months, I believe.

Q. Now, Mr. Niales was not there, I take it?

A. That's correct.

Q. Did you have an occasion to talk to him on the telephone?

A. Yes, I did.

Mathias Koehl

Q. And who called him, you or Mrs. Niales?

A. Mrs. Niales called.

Q. And do you know where he was when you were talking to him?

A. Well, the impression I got was that he was at work, his place of employment.

Q. All right.

What did you discuss with him over the phone?

A. I discussed the matter of the tickets and the film, the showing the following evening.

Q. Now, do you know whether Mr. Niales immediately left work after you talked to him?

A. I have no knowledge of that, one way or the other.

Q. Now, the Niales. Are you good friends of the Niales?

A. I was on friendly terms with them at the time, yes sir.

Q. All right.

page 2033 } They both had resigned from the Nazi Party?
A. They had the previous year.

Q. Do you have copies of their resignations?

A. Yes I do.

Q. May I see them?

A. You can question me about them and unless the Court so instructs, I don't see any reason why you can't proceed with your line of questioning. I have them, sure.

Q. Why don't you want me to see them? I would like to see them.

A. I can tell you anything that you want to know.

The Court: I think it's sufficient and material to this case that he's entitled to see them, Mr. Koehl.

Mr. Harrigan: May I have those marked for identification when Mr. Hassan finishes looking at them?

The Court: Do you have copies of them there?

Mr. Harrigan: Yes I do, Your Honor. The only problem is, they're not very clear.

The Court: Let me see them. I don't want to deprive him of the copies in his file.

I think they're legible enough.

If you want to compare them and let him see that they are true copies and if he says they are, you may use the copies instead of the originals.

page 2034 } Mr. Harrigan: Or I could have other copies made of those so they're clearer.

Mathias Koehl

The Court: You can make arrangements for that to be done and substitute them in the file.

Mr. Harrigan: May I have these marked for identification?

The Court: G and H for identification.

(Whereupon, Defendant's Exhibits G and H were marked for identification.)

Mr. Harrigan: Douglas Niales is G and Peggy Niales would be H.

By Mr. Harrigan:

Q. Now, would you compare your originals with these photostats and tell me if they're identical?

Mr. Harrigan: I would prefer, Your Honor, to put the originals in because they have the notary seal and everything else on them. The photostats do not show up.

Mr. Hassan: Well, I'll stipulate they were notarized at Old Dominion Bank on Fairfax Drive by a very good friend of mine.

The Court: You might cover it—maybe Mr. Hassan will stipulate that they were duly signed and notarized.

Are you going to offer these in evidence at page 2035 } this time?

Mr. Harrigan: Yes.

The Court: Are you going to object, Mr. Hassan?

Mr. Hassan: No sir.

The Court: If that's the situation then, it seems to me the Jury could be shown the originals and then return the originals to him and let the photostats remain in the file.

The photostatic copies will be received in evidence as Defendant's G and H.

Let the record show that the Jury examined the original of these documents.

(Whereupon, Defendant's Exhibits G and H were entered into evidence.)

* * * * *

Conf. The Court: May I see you gentlemen?

11/28/67 I suppose you gentlemen have all done the same
page 2 } research that I have on declarations of third par-

Mathias Koehl

ties, to establish motive of the accused, it's not admissible in most states as I understand it, and in Virginia it is. But something else must be shown.

I think Mr. Harrigan was aware of that from his comments on Saturday and that something else is an opportunity by that other person to have committed the crime. It seems to me that the two Virginia cases we have that permitted the defendant to show evidence of ill will by a third person against the deceased, they've also gone on to show that third person had some opportunity to commit the crime and didn't just leave it hanging.

It seems to me the defendant is entitled to go ahead with this kind of thing.

Mr. Hassan: I didn't object to it and I made the comment Saturday, Not Mr. Harrigan.

Conf. The Court: I think there must be some showing 11/28/67 of opportunity for a third person to have done it. page 3 } Otherwise, just leaving it hanging would bring it an expression of ill will from all over the world such as anonymous letters. But it would seem to me you are going to have to suffer a motion to strike it out later if you don't connect it up by showing some opportunity for these people to have committed the crime or to have participated in its commission by way of some conspiracy or something like that. It cannot be left dangling.

Mr. Morris: We thought perhaps maybe the court may do the same thing to the prosecution's evidence and not have it left dangling.

Mr. Hassan: We'll get to the motion to strike in proper order.

The Court: All right.

* * * * *

The Court: All right.

Mr. Koehl, I return the originals to you.

Mr. Hassan: I would prefer before returning them to have the clerk make photostats because the photostats he's submitting on that one in your hand do not include that card or envelope which have been shown to the Jury.

page 2036 } Mr. Harrigan: I have no objection to that.

The Court: Well, is that all you want the photostatic copies made of?

Mathias Koehl

Mr. Hassan: I want to make sure the exhibits are complete and not only a part of what was shown to the Jury.

The Court: All right.

By Mr. Harrigan:

Q. Now, showing you Niales resignation, did Niales ever indicate to you that sooner or later somebody was going to have to kill Rockwell?

A. No sir.

Q. Did he ever explain that statement to you on the bottom "I must now state through past experience with the Party that neither I nor anyone else ever having left the Part, past or present, would stay alive. Therefore, I close with the thought of survival."

Just what does that mean? Did you ever ask him what that meant?

A. No, I didn't.

Q. As a matter of fact, almost everybody left the Party at one time or another, had correspondence with Rockwell, didn't they?

A. What do you mean?

page 2037 } Q. Of some sort?

A. Before or after they left?

Q. Upon resigning or after they resigned or just prior to resigning?

A. Sometimes, sometimes not.

Q. All right.

But *inspite* of Niales attitude, you went down there that morning, is that right?

A. That was not his attitude at the time I went. A whole year had elapsed. I believe it was over one year and his reasons were largely personal for resigning as I took that and in the meantime—

Q. (Interposing) Well, doesn't his resignation state many of his reasons?

A. He was on friendly terms with the organization at the time I went down there. In other words, he had come around from time to time, not often but occasionally.

Q. How many times did you visit Niales during the course of the year? Was he a good friend of yours?

A. I visited him about maybe half a dozen times.

Q. Was Rockwell a friend of Niales?

A. He never expressed anything to me. I have no indication that he was.

Mathias Koehl

page 2038 } Q. You got a parking ticket in front of the Niales' house, didn't you?

A. That's correct.

Q. And after you left the Niales house, where did you go?

A. I went to pick up the mail at the main Post Office here in Arlington.

Q. And what time did you get back to the barracks or did you go straight back to the barracks from the Post Office?

A. Yes I did and I got back, I believe, it was a few minutes past 11:30.

Q. Now, when you got back at 11:30, where was Rockwell?

A. He was in the room working.

Q. Alone?

A. Yes.

Q. And were the same individuals, Bruce, Parsons, and Parker still there when you came back from the Post Office the second time?

A. Yes they were.

Q. Now, did there come a time when Rockwell came out of his room?

A. Yes there was.

Q. What time was that?

page 2039 } A. Approximately, I would guess about ten minutes to twelve, could have been maybe one or two minutes earlier than that.

Q. Very close to ten minutes to twelve?

A. That's correct.

Q. Give or take a minute or so, is that correct?

A. That's correct.

Q. Did you have a conversation with him?

A. I wouldn't call it a conversation. I indicated that I wanted use of the car and we discussed that briefly before he took it.

Q. Because you wanted use of it also?

A. That's correct.

Q. All right.

Now, did any of these other individuals over hear your conversation?

A. They might have, I don't know. It was within earshot of somebody had they been paying attention or listening downstairs.

Q. Who was within earshot?

A. I can't say. I say it's possible assuming they were im-

Mathias Koehl

mediately below and listening in. It was in the hallway outside of Commander Rockwell's room.

page 2040 } Q. Your rooms are upstairs also?

A. Mine is just down the hallway a couple of doors.

Q. Do you have a phone in your room?

A. No, I don't.

Q. He had one in his?

A. Yes.

Q. Where were the other phones in the building?

A. They were all downstairs. The three other individuals were downstairs.

Q. All right.

And all were downstairs, that would be one in the main room down there?

A. At that precise moment, I don't know where they were because I had no way of seeing them. It's possible. Well, I just couldn't honestly say. They were in the various rooms downstairs, exactly where I don't know.

Q. Do you have jacks on them that you could move them around?

Mr. Hassan: I think it's obvious one person is talking telephones and one's talking people.

Mr. Harrigan: I'm talking telephones. Where was the telephones downstairs?

page 2041 } The Witness: Excuse me. The telephones—there's only one telephone downstairs. There are three extending outlets upstairs.

Q. All right.

Now, how long was this conversation you had with Mr. Rockwell?

A. How long did the total conversation last?

Q. Yes.

A. About half a minute.

Q. All right.

And did he indicate to you where he was going?

A. He did.

Q. Did he indicate what he was going for?

A. Yes he did.

Q. What was it, to do his laundry?

A. That's correct, sir.

Mathias Koehl

Q. And at that point, you already knew his laundry was in the car?

A. Yes, I had assumed it was his laundry. And that confirmed it when he said he was going down to do his laundry.

Q. When he left the house, did he take anything with him?

A. I don't have any direct knowledge of anything he might have taken with him.

page 2042 } Q. You didn't see him take anything, no other laundry?

A. No sir.

Q. Who, other than you and Mr. Rockwell, knew that he was leaving to do his laundry at ten minutes of twelve?

A. Well, I guess everybody downstairs. I'm assuming everybody downstairs knew of it. Maybe somebody was in the kitchen or in the back who was not aware.

Q. You're assuming?

A. I'm assuming. Everybody—

Q. (Interposing) Everybody over heard your conversation?

A. No, no. I'm not assuming that. I'm just assuming he was—knew he was doing his laundry. This is a guess on my part. There were, I believe, at least two of them who knew it and whether all three of the other individuals knew, I can't say for certain. I would guess that probably was the case.

Q. Did you tell anybody?

A. No.

Q. So they didn't know from you, you're sure about that?

A. I discussed it later on when there was a little bit of delay.

Q. Between ten minutes of twelve and 11:48 did you tell anybody?

page 2043 } A. No.

Q. Now, who usually did Mr. Rockwell's laundry?

A. Usually, I think, it was the barrack's officer, the person in charge of maintenance and upkeep. The exact individual might have varied but it was the person with those responsibilities who normally would have done something like that.

Q. What you're saying is normally Rockwell wouldn't have done his own?

A. That's right.

Q. Now, did Rockwell ever take guards with him when he went various places?

A. Sometimes he did and sometimes he didn't.

Mathias Koehl

Q. Who was responsible to see whether he had guards or not, that was your job, wasn't it?

A. Well, there was no strict security arrangements. In other words, on small personal things like this if he wanted to get some pipe tobacco or something like that, he would just go off and get it and there were a number of occasions where he would go to places and never even tell anybody. We didn't have our normal numbers at that time. We had some persons on a trip and the security arrangements weren't what they should have been.

page 2044 } Q. Who was in charge of the security?

A. I was in charge of those matters.

Q. So, you for one reason or another did not tell somebody to go along with him, is that right?

A. That's right.

Q. Now, what time did he leave the house and go out and get in the car?

A. I believe it was just a minute or two after I spoke to him he was on his way.

Q. And that would make it approximately what time?

A. It would still be around ten minutes of twelve, maybe a minute or so past.

Q. All right.

Now, how long does it take to go out and walk to the car and drive down the hill and across the street to the laundromat?

A. It shouldn't take very long at all.

Q. Well, how long?

A. Maybe five minutes.

Q. You can walk it in five minutes, can't you?

A. Probably sooner within an automobile.

Q. The Nazi Headquarters is located almost a few feet up the street, a hundred or so feet up the street and
page 2045 } directly across the street, isn't it?

A. It's one block west on Wilson Boulevard from the laundromat and about the equivalent of one long block up the hill.

Q. Well, at the very best, it's very, very short distance?

A. Relatively.

Q. Now, after Rockwell went out and got in the car and left, where did you go?

A. I went back to do some work in the meantime. He indicated he was only going to be gone a few minutes but I figured

Mathias Koehl

I might as well take advantage of the few minutes to do some work.

Q. When you went back, did you go to your room?

A. To my office.

Q. Where is that?

A. Next to my room.

Q. Upstairs?

A. That's right.

Q. Do you have access to a phone up there?

A. That's correct.

Q. Now, was there anybody else up there with you?

A. No sir, there were not.

page 2046 } Q. Did you make any calls?

A. No, I didn't.

Q. Now, did anybody come up in your room during the period from the time Rockwell left and you went up until you started receiving calls?

A. I don't believe so. It was a relatively short time. I don't think there was anybody who came up.

Q. And you didn't talk to anybody over the intercom, I take it?

A. I can't recall.

Q. So nobody knows?

A. To the best of my knowledge, I did not.

Q. There's nobody that can testify you were up there then during that short space of time, is there?

A. I believe it was common knowledge that I was in my office working.

Q. All right.

Now when did the telephone calls start coming in that Rockwell had been shot?

A. They came in sometime. I think it must have been almost fifteen minutes later.

Q. And were you still in your room?

A. No, I was not.

page 2047 } Q. Where were you at that time?

A. I was—excuse me. Yes, I was, at the time in my room at the time the calls were received because I was called on the intercom. But in the meantime, I had been downstairs.

Q. Then you wouldn't know if anyone else left?

A. Well, we were all waiting for the use of the car. We had expected the Commander to come back so it would have been

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a violation of our arrangements there. In other words, we were all set to go and it was with the understanding that the men weren't to get scattered about so presumably they were all down there and I have nothing to indicate that they weren't downstairs.

Q. Now, did you send anyone down to the scene of the shopping center where Rockwell had been shot?

A. I sent two individuals down after we had received several calls from the news media.

Q. And was that one of them, Robert Bruce?

A. That's correct.

Q. And the other was who?

A. Donald Parsons.

Q. Did you go down?

A. No sir, I didn't.

page 2048 } Q. To the scene at any time?

A. No sir.

Q. Did you say no?

A. No sir.

Q. Well, did Bruce and Parsons come back up and tell you what they observed down there?

A. Yes they did.

Q. And did they say they went right to the shopping center?

A. Yes sir. As I said, I had instructed them to.

Q. And they saw what happened and they walked right back up to the Nazi Headquarters and nobody even slowed them up?

Mr. Hassan: If Your Honor please, if he wasn't there, he wouldn't know the answers to these questions.

By Mr. Harrigan:

Q. What time did they come back?

A. I believe it was within five minutes or so. It might have been a little longer than five but I'll say at least five minutes.

Q. Then was there any reason why you didn't go down? You didn't even know whether he was dead or alive at that point did you?

page 2049 } A. When they came back with the eye witness account, yes I did.

Q. But you didn't go down at all?

A. No sir.

Q. What did you do then, place a guard on the gate?

Mathias Koehl

A. I believe there may have been somebody placed outside, I'm not sure.

Q. Donald Parsons was placed outside with a rifle, wasn't he?

A. It's very likely.

Q. Wasn't he?

A. He was in charge of security at that point.

Q. At that point?

A. Whether he was posted outside at that gate or just immediately on the porch or exactly where it was, I believe he was in that general area.

Q. Is he an officer of some sort?

A. That's correct.

Q. What is he?

A. He's a Warrant Officer.

Q. A Warrant Officer.

Was he a warrant officer then on the 25th of August?

A. I believe he was.

page 2050 } Q. Then he took it upon himself to go down
and guard the gate and not let anybody in, that's
what you're telling us?

A. I had spoken to him and told him to supervise the security and presumably that's when he took care of any outside arrangements of the security.

Q. Now, did you see Mr. Niales that afternoon?

A. I may have.

Q. Do you recall seeing him?

He came up to the barracks, didn't he?

A. I believe he did.

Q. What time? 1:30?

A. It's possible.

Q. Now, are you saying you don't recollect him being there?

A. I would say it's very probable. With what happened there were just a lot of people coming and going and with something like that, this happening, my mind was—I was blacked out with the people coming and going as far as recalling a specific individual when they came and went and that sort of thing, paying their condolences and newsmen begging for interviews and the whole works. It was quite hectic that afternoon and my recollection of it as to
page 2051 } whether he was specifically there and when he
was there, I honestly can't say.

Q. All right.

Mathias Koehl

A. But it's possible that he did come over sometime in the middle or later part of that afternoon.

Q. Now, at what point did you start making phone calls to various headquarters and to individuals?

A. It was within the next half hour.

Q. The next half hour after what?

A. After Parsons and Bruce returned from the shopping center.

Q. And you called where, Dallas?

A. I don't know which sequence I called in. I called California, I called—

Q. (Interposing) Who did you talk to out there?

A. I called Ralph Forbes.

Q. He was there, right?

A. That's correct.

It's possible. I spoke to him—now he may have called me but I believe I attempted to call him and whether he beat me to it or not, I'm not sure, but there was contact with Captain Forbes in California.

Q. Then you called some other organizations?
page 2052 } A. Pardon?

Q. You called some place else. Did you call Dallas or Chicago?

A. I notified Dallas. Chicago, they called in.

Q. And then you called a Dr. Pierce or didn't you call him?

A. That's right, I did.

Q. You never called Lloyd, did you?

A. Not that I know of.

Q. There wouldn't be any reason to call Lloyd would there be?

A. I might have mentioned something to Dr. Pierce to notify him but as far as—in other words, I didn't want to be tied up all afternoon on the phone, either. I was just making a few calls to notify people in different areas.

Q. Was Dr. Pierce a party member?

A. Yes he was.

Q. Where does he live?

A. In Fredericksburg.

Q. He calls himself a doctor. Is he a doctor or what?

A. That's right. He's a Doctor of Physics.

Q. Now, did Dr. Pierce come up after you contacted him?

A. Yes he did. He was up later that afternoon.
page 2053 } Q. He came up by himself?

Mathias Koehl

A. I don't recall. He may have been by himself or accompanied by Lloyd.

Q. Now, are you telling us Lloyd was there that Friday?

A. It's very possible.

Q. Well, you say it's very possible. I'm asking you. Can you tell us whether he was or he wasn't.

A. As I said earlier in the case of Niales, I do not know definitely. I don't know positively. I did—he was definitely up on the following Saturday. Whether he came up earlier, I can't say.

Q. All right.

What you're saying is that you don't know whether Lloyd was with him or not, is that right?

A. That's right.

Q. Did Dr. Pierce stay that night?

A. Yes sir, I believe he did.

Q. Lloyd didn't stay there that night, did he?

A. I can't honestly recollect on that.

Q. All right.

What kind of car does Pierce drive?

A. I believe—I don't know if it's a Plymouth.
page 2054 } It's a dark blue compact. I think it's a Plymouth.
I'm not sure. It's one of these small compact models.

Q. And did you see that car—did he drive up in that?

A. I just don't recollect.

Q. What kind of a car does Lloyd drive?

A. He drives a Volvo.

Q. Did you see that car?

A. I don't remember.

Q. Now, did you say that Lloyd was dismissed from the Party or that he was not dismissed?

A. He was not dismissed from the Party.

Q. Now, after Rockwell had been shot—strike that.

Lloyd was at the very least then not an active member prior to the 25th? He hadn't been for sometime, had he?

A. No. He was a regular member but he was not a staff member in Arlington.

Q. Did he work somewhere else?

A. Yes. He had his own business in Richmond.

Q. But that wasn't any Nazi business. It was his own, wasn't it?

A. That's correct.

Mathias Koehl

Q. All right.

Now, after Rockwell had been shot, did you
page 2055 } have a meeting some two days later with Dr.
Pierce and Dr. Lloyd and yourself?

Mr. Hassan: I would like him to explain the promotion of
Lloyd to doctor.

Mr. Harrigan: I'll strike the doctor then. There's too
many titles here and I get confused.

By Mr. Harrigan:

Q. Was there a meeting that Sunday?

A. I can't remember.

Q. You don't remember that, either?

A. I can't recall any formal meeting.

Q. Dr. Pierce was there and Lloyd was there, weren't they?

A. We may have discussed things but as far as there being
a formal meeting, I don't recall any.

Q. But now, Lloyd is back in actively in the Party, is
that right?

A. That's correct.

Q. And if you left, he would be the next in command?

A. That's correct.

Q. So that makes him deputy commander almost?

A. He's executive officer of our Nazi Headquarters.

Q. So you and Dr. Pierce and Lloyd are the
page 2056 } three top men?

A. Along with some of the various other of-
ficers, as far as the Party organizational structure is con-
cerned.

Q. Now, did you have nominal disagreements with Rock-
well about money?

Mr. Hassan: I object to that, Your Honor.

The Court: Well, it is a little far afield.

By Mr. Harrigan:

Q. Did you have any disagreements with Rockwell about
paying you money?

A. No. We had minor disagreements but nothing—I think
everybody in any organization has disagreements at one time
or another at one time but over a long association nothing
that I can recall.

Mathias Koehl

Q. You requested salary and paid assistants from him and so forth, didn't you?

Mr. Hassan: He didn't lay any foundation for this.

The Witness: This was not a personal request. This was a general overall organizational standpoint. We discussed the matter a number of times. That's correct.

By Mr. Harrigan:

Q. Now, when you were testifying and you brought in all of these exhibits about Patler and he had—

page 2057 } Mr. Hassan: (Interposing) I'm going to object. He didn't bring in these exhibits.

Mr. Harrigan: Well, he provided them.

Mr. Hassan: You've got a lot of photostats.

Mr. Harrigan: You provided the exhibits.

The Witness: What exhibits?

The Court: Establish where he provided them. But the objection is over ruled.

Mr. Harrigan: All right.

By Mr. Harrigan:

Q. Did you provide those exhibits that Patler had written to Rockwell a memorandum about his change of duty and so forth.

A. Right.

Excuse me. Did you ask whether I had written them?

Q. No. I asked had you provided them for the Commonwealth to show?

A. That's correct.

Q. Do you have those?

May I see them?

The Court: All right, Mr. Harrigan, this may be a good time to break for a recess.

(Whereupon a short recess was taken.)

page 2058 } The Court: Gentlemen, the clerk has made two much clearer copies of the original of these exhibits and I have marked the clerk's copy Defendant's Exhibit H as to the letter signed by Peggy A. Niales and Defendant's Exhibit G a letter signed by Douglas Niales and those

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previously marked on copies of Mr. Harrigan I have stricken out and return those to him and we'll return the original to the witness.

Will you call the Jury?

Mr. Koehl, I now return these originals to you.

Go ahead Mr. Harrigan.

Mr. Harrigan: What was the last question?

(Whereupon, Reporter read back the last question.)

By Mr. Harrigan:

Q. Now, I show you Commonwealth's Exhibit 58B which has been admitted into evidence where it alleges certain conduct on the part of Patler. Now that first item, what was that? Did you read that item, Item A?

A. Do you want me to read it—

Q. (Interposing) Yes.

A. (Continuing) allowed—

Q. (Interposing) Go ahead.

A. (Continuing) for the benefit of the Jury?

Q. Please do. They've already heard it.

page 2059 } A. "A. Abandoning your command with neither notice nor permission from the officer in charge."

Q. I see.

Now, do you know what that arose out of?

A. Yes I do.

Q. Wasn't that a dispute between Rockwell and Patler because he was spending too much time with his family?

A. Well, what he did during that time, I don't know. But the fact that he was gone from his post led to this dispute.

Q. Wasn't it a common knowledge that he was spending too much time with his family and Rockwell didn't like that?

A. He was away from his assigned duties and this is what Commander Rockwell objected to.

Mr. Harrigan: There was another exhibit which is the answer to that I'm trying to find, Your Honor. It doesn't seem to be here.

By Mr. Harrigan:

Q. Now, No. 2 that you have on there, gross insubordination and insulting conduct of officer.

Mathias Koehl

Mr. Hassan: That's not two. No. 2 starts off—the only
two on there refer to two storm troopers.
page 2060 } Mr. Harrigan: All right. No. B.
The Witness: What was the question?

By Mr. Harrigan:

Q. Is that second charge No. B, gross insubordination?

A. That's correct.

Q. I see.

That was an internal thing. It was an alleged internal
thing, wasn't it?

A. It was in the Party, that's correct.

Q. And insubordination to officers was not uncommon in
the Nazi Party?

The Court: Is that a question?

The Witness: Well, it occurs.

By Mr. Harrigan:

Q. As a matter of fact, almost all of those charges deal
with performance of duties, don't they?

A. Yes.

Mr. Hassan: I object to that because some of these charges
are spelled out in more detail on the face of the document.

The Court: The objection is over ruled.

By Mr. Harrigan:

Q. All right.

page 2061 } Now, it says here that Patler called the Com-
mander a liar and told him that he was dis-
honorable. He called him a liar because he said he didn't
abandon his duties down there. He told everybody where he
was going. He was going home to his family and he left a
number where they could call him if they needed him. Isn't
that right?

A. I don't believe it is. I don't believe we were able to—I
don't believe we knew how to reach him at the time you're
referring to.

Q. Now, that part about being dishonorable. That arose out
of Patler accusing Rockwell of taking vacations on Party
funds and they should have used it for Party purposes, isn't
that right?

Appendix 7

Psychiatric Examination of John Patler
by Dr. Gerhard K. Cotts
August 1967

DEPARTMENT OF MENTAL HYGIENE AND HOSPITALS
PART II
INTERROGATORY AND HISTORY AND PHYSICIANS EXAMINATION
FOR CRIMINAL CASES

As required Under Section 19.1-228 of the Code of Virginia of 1950 as amended.

Prepare only one copy and submit with Court Order to the hospital to which person is committed.

Southwestern State
Name of Hospital to which patient is being committed

Name of Patient John Patler
Full First Name Full Middle Name Full Last Name

Address 2522 Lee Highway Arlington Va
Street or Rural Number City or Town County or City Residence

Place of Commitment Arb. County Jail

Nearest Relative or Correspondent: Alice J. Patler
Name

Same as above wife
Address Relationship to Patient

FILL IN THE FOLLOWING PERSONAL INFORMATION ON PATIENT:

Birth Date 1/6/38 Birth Place New York City

Marital Status: Single ☐ Married ☒ Widowed ☐ Divorced ☐ Separated ☐ Unknown ☐

Religion: Protestant ☐ Catholic ☐ Jewish ☐ Other ☒ Unknown ☐

Alcoholic Habits: Abstinent ☒ Temperate ☐ Intemperate ☐ Unknown ☐

Drug Habits: State Briefly none reported.

Previous Psychiatric Care:

Psychiatric Inpatient Facilities Morrisania Hospital none
Name and Address

Dates of latest admission or discharge (State which)
 Psychiatric Outpatient Clinic Morrisania Hospital, Bronx, N.Y.
Name

1957-1958
Date of Service

Institution for the Mentally Deficient none
Name

Address Dr. Cusack New York City Date of latest admission or discharge
 Private Psychiatrist 1956-1957
Name Address Date of Service

TYPE OR PRINT ALL INFORMATION, except where signatures are required.

DMH 1031 (3-57)

Approved by the State Hospital Board.

State briefly any physical disease present or recent illness or injury: none reported

Is patient on medication? Yes ☐ No ☒ If yes, What _____

If hospitalized, where New York City (as a child)

Name

Address

MENTAL INFORMATION:

State briefly mental symptoms of patient: observed during interview

Obsessional (and possibly paranoid) traits could in part be result of cultural background. Possibility of & Fugue states cannot be determined in present setting.

When first observed _____ How rapid development _____

Has patient attempted suicide: Yes ☐ No ☒ If yes, Explain _____

Has patient attempted homicide: Yes ☐ No ☒ If yes, Explain None admitted or known to examiner

If mentally deficient, if psychological testing information available, give intellectual level _____

Determined by _____

Name

Address

Is there present convulsive disorder? Yes ☐ No ☒ If yes, Explain (including medication) _____

INFORMATION RELATIVE TO CRIME:

Has patient been charged or indicted for crime, past or present? Yes ☐ No ☒ If yes, Explain _____

"Juvenile Offender" (1956)

Is patient under criminal charges at present? Yes ☒ No ☐ If yes, what charge Homicide

SPECIAL INFORMATION REGARDING INEBRIATES OR DRUG ADDICTS:

Is patient:

Is this patient an alcoholic? Yes ☐ No ☒ If Yes, give reasons for your opinion _____

Drug Addiction:

patient is a drug addict, what drugs are used and amount _____

Other information regarding the use of drugs, describe briefly _____

CERTIFICATE OF WITNESSES

We, the undersigned witnesses, summoned before this hearing hereby certify that the testimony given by us under oath is true and correct to the best of our knowledge and belief.

Signature of Witnesses

Relationship to patient (if public
Official, title) and address, PRINTED

Name (Seal)

Name (Seal)

Name (Seal)

Relationship Address

Relationship Address

Relationship Address

THIS MUST BE SIGNED: We, the undersigned physicians of the commission in this hearing, after personal examination, believe the aforementioned person is in such mental condition that his confinement in a hospital for the insane ~~is necessary for proper care and observation.~~ *not necessary*

Signature

TYPE OR PRINT NAME AND ADDRESS

Gerhard K. Lott, M.D. (Seal)

Doctor of Medicine

Doctor of Medicine (Seal)

Clinical Psychologist (Seal)

Name

Address

Name

Address

Name

Address

Subscribed and sworn before me this _____ day of _____ 19____

Judge or Justice

Type
or
Print

Name _____
Title _____
Address _____

*Used only in case patient being examined is a mentally deficient within the meaning of the law.

Appendix 8

Confirmation of Exhibits in
Commonwealth of Virginia v. John Patler
November 1972



H. BRUCE GREEN
COUNTY CLERK

Arlington County, Virginia
OFFICE OF COUNTY CLERK
COURT HOUSE
ARLINGTON, VIRGINIA 22201

This is to certify that on the 3rd day of November, 1972 I examined
the following exhibits in the Case of Commonwealth of Virginia vs.

John Patler:

No. 41	Small Br. Envelope cont. metal fragments
No. 43	Coat
No. 44-A	Pistol
No. 44-B	5 cartridges in Sm. Br. Envelope
No. 8A	Rolled Towel
No. 48-A	1 green container with 1 casing
No. 48-B	Vial container with 1 bullet
No. 48-C	Vial container with 1 bullet
No. 48-D	Vial Container with 1 bullet
No. 48-E	Vial Container with 1 casing
No. 48-F	Vial Container with 1 casing
No. 48-G	Vial Container with 1 bullet
No. 50	Large Brown Envelope containing 7 pill boxes
No. 50-A	Rectangular Pill Boxes, cont. Bullet Fragments
No. 50-B	Rectangular Pill Boxes, cont. Bullet Fragments
No. 50-C	Rectangular pill Boxes, cont. Bullet Fragments
No. 50-D	Rectangular pill Boxes, cont. Bullet Fragments
No. 50-E	Rectangular pill boxes, cont. Bullet Fragments
No. 50-F	Rectangular pill boxes, cont. Bullet Fragments
No. 50-G	Rectangular pill boxes, cont. Bullet Fragments

R. P. Smith

.....
Name

.....
927 15th St. NW, #409

.....
Address

.....
WASHINGTON, D. C. 20005



H. BRUCE GREEN
COUNTY CLERK

Arlington County, Virginia
OFFICE OF COUNTY CLERK
COURT HOUSE
ARLINGTON, VIRGINIA 22201

This is to certify that on the 14th day of November, 1972 I examined
the following exhibits in the case of Commonwealth of Virginia vs.

John Patler:

No. 43	Coat
No. 48	Brown envelope containing 7 viles numbered 48A through 48G
No. 13A	1 Shell casing
No. 16	1 Shell casing
No. 8E	1 Pair Canvas shoes
No. 42	1 Cap
No. 21	Envelope containing photographs of footprints (6 Parts)
No. BB	Black Raincoat
No. CC	Light Raincoat
No. DD	Light Plastic Raincoat

Robert G. Smith Meredith E. Rode
Name

927 15th St NW
Address
Work in DC.

Appendix 9

Commonwealth Exhibit No. 5G –
Letter from John Patler to George Lincoln Rockwell
August 25, 1967

CONFIDENTIAL

WNS
8-25-67

11/28/67

Can. 4. No. 56 ~~failed~~

Comm. Ex. 56
CNR

Dear Commander:

We all gathered around and listened to your debate with Stokely Carmichael. It was terrific. You handled yourself beautifully. I would like to borrow one or two tapes per week from you and hold some educational-type sessions down here. It would be one of the best ways to educate and train our people for debate.

I feel much better after talking to you. I want so badly to get back into the spirit of things and push for you all the way. I don't think ~~there~~ there are two other people on earth who think and feel the same as we do. Whenever I become discouraged or disillusioned, I feel empty inside. You are a very important part of my life. I need you as much as you need me. Without you there is no future.

Please be sure to return this letter with all the other vile letters I wrote to you. I feel very ashamed and uncomfortable with those letters in existence. It would prove very embarrassing in the future if they are not destroyed. There is no doubt that some of Hitler's ~~most~~ closest men got angry at him and said or ~~wrote~~ wrote things about which they were later on ashamed of. So please return them, including this letter.

As for that other incident you mentioned...it always takes "two to tango". I don't know what the other party said to you, but I don't "grab" anybody unless they are looking to get "grabbed". No woman has a hold on me. If Alice wants to make it with you, I wouldn't object. That is the truth. I would only get angry if it was forced on her against her will. Just the other nite (and this is strictly confidential) Mrs. A, was "grabbing" ME in my room. I began to reciprocate, but cut it off. And sometime I'll tell you about that little scene.

Ever since Erika, I have learned my lesson. Alice is an exceptional girl. She worships you. I am working (part-time) only to do what is honorable. I've got to start doing things right again. I am sick and tired of sneaking, hypocrisies, etc. I want to face myself and get on the right track. But I will never, never let a woman control me. I've learned my lesson.

Also, I have been doing a tremendous amount of reading. And I do not need to cram down all the garbage being fed to kids today. I have debated on personal scale with liberals, very educated ones, in fact, and have held my own. What I am doing is studying college text books to see what the kids are learning so that I can be on the ball when dealing with them. And, there are ways in which you can squeeze out of tight spots with quick and evasive talk. Diversionary type talk. Please don't hold lack of education against me. Sure I'm unpolished and not "educated". But what would you want: The present John Patler from the gutter with a heart on fire and a burning love for the working people and you and the cause; or, an "educated" snob full of false pride and conceit? I'm doing my best, getting better every day. I wish you could see me in action talking face to face with college people...any people. I do a damn good job on them, in spite of my lack of "book learning".

Sieg Heil!

Patler

Appendix 10

Commonwealth Exhibit No. 54 –
Arms Possessed by American Nazi Party
March 1, 1965

Can. Ex. No. 54 ~~10/1/54~~

ARMS POSSESSED by AMERICAN NAZI PARTY

The American Nazi Party is in the possession of one each of the following weapons:

description	ser. #	owner
Luger, 9mm, 8" barrell	3129	Robert A. Lloyd, III
Hi Standard 22 cal. auto pistol	1295909	Lon Dunaway
Walther P-38, 9mm	9881 d	Robert A. Lloyd, III
Browning auto pistol, 7.65mm	25191	Michael L. Lutman
Browning auto pistol, 9mm	55452 d	Robert A. Lloyd, III
Harrington & Richardson 38 cal. revolver	7490	Alan J. Welch
Swiss army rifle w/strai- ght pull bolt action	328213	Robert A. Lloyd, III
Ray State 16 ga. single barrell shotgun	A500610	Alan J. Welch
Enfield Rifle, No. 4, Mk. 1	F15064	Robert A. Lloyd, III
M 1 Carbine-new issue army model, 30 cal.	32077	Donald A. Parsons
Mauser Rifle, model 98	6772 g	Roy E. Frankhouser
Italian Ferni Army rifle	9877	Michael L. Lutman
Mauser Army Rifle	20971	Roy E. Frankhouser
Mauser pocket pistol early model, 32 cal.	343164	Robert A. Lloyd, III
✓ Mauser army pistol, 30 cal		Robert A. Lloyd, III

description	ser. #	owner
Harrington & Richardson revolver, 22 cal. 9 shot	922474	George Lincoln Rockwell
Walther P-38, 9mm	4303 N	George Lincoln Rockwell
Check model "ZE 25 cal. auto pistol	236256	Matt Koehl
38 cal. police special special revolver		George Lincoln Rockwell Party, Inc.
9mm Star auto Pistol, Spanish	2639 & 409	Robert Lee Pace

As of 3/1/65 jmc

Appendix 11

Commonwealth Exhibit No. 58B –
Letter of Dismissal from American Nazi Party
to John Patler
April 1967

1777
Com. Ex. No. 58-B *add.*

TC: John Patler

(1) On 30 March 1967 you were relieved of command of the Printing Plant and transferred to the Barracks in Arlington for: (a) repeatedly abandoning your command for periods of almost a week with neither notice nor permission from the Officer-in-Charge; (b) gross insubordination and insulting conduct to superiors; (c) gross neglect of duty in failure to produce more than two (2) STORMTROOPERS in one year; (d) promotion of dissension and upheaval at both headquarters to which you were assigned; (e) persistence in promotion of a spirit of distrust by non-Nordic Members of the Party of the Nordic Members, including the incredible toleration or promotion of the derogatory term of "blue-eyed devils" applied to the Nordics by Mediterraneans, in spite of the firmest possible Party policy of White unity; and (f) arrogant usurpation of authority, in leaving out of the latest STORMTROOPER the pages of items for sale, on which the Party depends for its financial existence, with gross disregard for the authority and needs of the Dallas Sales & Subscriptions Division.

(2) You were offered the opportunity to submit the matter to a Party Court, but declined. You agreed to accept transfer to Arlington, and to proceed with Party business.

(3) You asked for and were granted the right to make a written answer to the charges leveled against you in the transfer order; and the Party agreed to mail out your answer to all those who received the charges.

(4) On or about 31 March 1967 you mailed to our Dallas Office a letter attempting to "explain" your actions in leaving out the advertisements from THE STORMTROOPER without notice or agreement or permission from anybody. In this letter, you submitted no facts, but called the Commander of the Party a "liar" and a person guilty of "dishonorable actions", who took a vacation on Party funds which should have been used for paper. It is manifestly impossible for you to serve under the direction of a man you consider a "liar" and "dishonorable."

(5) The letter to Dallas makes it abundantly clear that, far from feeling any guilt or remorse, you are determined to "prove" to the Party that you are right at all costs, and that you will persist in your hostile and irresponsible conduct.

(6) You will still be given a complete and fair chance to prove your charges to the entire Party, if you so desire, on the week-end of 10 and 11 June at a Party Court. I hereby bind myself to abide by a vote of all Party Members present, sitting as a jury in this extraordinary case.

(7) In the meantime, you are summarily dismissed from the Party, as of the moment of delivery of this letter by Major Koehl.

(8) Major Koehl has been directed to supervise the careful and just separation of your personal possessions from Party material and property in your custody. He has also been advised to request the presence of an Arlington law enforcement official at such separation, if possible, in view of your conduct the previous time

Appendix 12

Commonwealth Exhibit No. 61 –
Letter from George Lincoln Rockwell to John Patler
June 25, 1966



GEORGE LINCOLN ROCKWELL

Dear Mr. Patler:

It's hard not to reply to your recent memorandums and your temper tantrums and sulking periods in kind. I will confess that I, too, can get emotional. But I realize they are wrong, and try not to do so. I will continue to try to deal with you in this letter without rancor. But it ain't easy.

NOT TRUE AT ALL

You are rapidly approaching precisely the same point with the Party where you were with Burros, Erika and Ryan. Today, Burros is Dreger, Erika is Alice, and Pierce is Ryan. The parallels are far from exact, but the but rather principle, --your refusal to be a professional and to operate as the leader of a street gang, --is the same. You act in the primitive and juvenile manner of kid gang leaders, --or old gang leaders, for that matter. There can be no question of your ability to lead, --but it is presently juvenile and primitive to the point where you are incapable of PROFESSIONAL, National Socialist leadership and participation in a mass political effort requiring you to deal positively and effectively with people and situations you, personally, don't like. You react to anything which displeases you with a temper tantrum, sulking, and, what is worse, --and intolerable, --a private conspiracy with your "gang" against the hated situation or person. My reasoning with you, my most strenuous efforts to rehabilitate you, my downright brotherly feeling of real love for you, my best efforts to please you, my efforts to discipline you, --NOTHING helps. You react to all of these precisely the way a spoiled kid would react to all of them. MOST of the trip around the Country was for YOUR benefit, and I moved heaven and earth to arrange that, both to do something for you, for all you've done for the Party, and because I hoped you'd become something of a friend during the trip, --and get over the sulks and the temper fits, etc, --at least a little bit. When I tried to show you how much I cared about you by mentioning this once, in Shreveport, you threatened to quit there and then. I was stunned and busted to pieces, but kept going.

WRONG

Since then, I have watched you change from the contrite and lovable guy who came back here honestly and sincerely, to an arrogant, insubordinate, insufferable, --often hateful, --and especially intractable leader of a private gang within the party, at odds with me and anything you don't like. Your last two memorandums to me, for instance, have been loaded with "GOD-DAMN", --something I have not seen even from some of the wildest of other hell-raisers. I am quite sure you do not realize exactly what you have been doing, which makes it worse. You are sure, I am convinced, that you HAVE to do what you are doing, for the "good of the Party", etc, --but I remind you that you were equally, --and equally obnoxiously--convinced of your holy mission and rightness when you sneaked out of here with Mr. Burros.

I AM JUST GOD STUPID

DID NOT SNEAK

Can. E. No. 61

CMDR READ THIS AGAIN - YOU HAVE LIED AND TWISTED EVERYTHING. NOW, IS IT AN INSULT OR INSUBORDINATION TO EXPOSE LIES?

June 20, 1961

WHERE IS THIS "NG" WHO IS THIS "GANG"?

NOT
TRUE AT
ALL

FALSE
FALSE
FALSE

When we first got the place in Spotsylvania, I "gave" it to you, totally and completely, --and hopefully, --believing that the TOTAL responsibility of your OWN place ~~at the~~ would force you to mature from a kid ~~to~~ ^{ALWAYS THIS} gang leader, (and a creative artist, thinker and printer, etc) into a mature and professional LEADER. When I tried to help you with a list of the things you would need to take care of as leader, you blew up, (Mr. Patler, had near hysterics at me, and insisted that you could not and WOULD not deal with such mundane matters as plumbing and finances, etc. Col Welch and I tried devilishly hard to figure how we could diplomatically help you, and GAVE you Ely to try to ease this problem. You don't want him. So we are taking him back at YOUR request, after you have busted him to pieces psychologically by permitting him to be publicly struck in the face, --by a VERY junior man, --without any severe punishment for such man by you. (While you howl about a "junior" man, --Dreger, --being handed money intended for ~~you~~ CAMP.

Out of a blue sky, you write me a very snotty and insubordinate note RAGING that you will not tolerate anybody else handling the money but YOU, and containing the charge that I have hurled a "GOD DAMNED INSULT" at you, --when I knew nothing of all this, and

AS A MATTER OF ACTUAL FACT, --DREGER HAS NOT BEEN PUT IN CHARGE OF YOUR FUNDS, AS I HAVE BEEN ASSURED BY COL. WELCH.

IF
SO, HOW
COME I
DON'T HAVE
A DENNY
FOR ME.

Without waiting to find out ^{CAMP} what it's all about, you BLAST me with that vile note about you getting ~~your own~~ money, etc, --after you REFUSED that very function when I tried to GIVE it to you down there, --and when, as a matter of provable fact, the money was handed to Dreger ONLY because you had Shoved off down the hill on one of your temper sulks, and Dreger was handed the money FOR you. ~~I~~ ^I STILL HAVEN'T GOT IT.

The present troubles with you are NOT organizational, anymore than they were when you ran out last time, --they are EMOTIONAL, --and they are not mine in origin. I didn't invent Erika, I didn't conspire with Burrow, nor did I hate Ryan.

I DON'T "HATE" THE MAN

This time, it is Pierce you hate, (Alice with whom you are involved) and Dreger with whom you are buddies, --at the expense of all discipline and organization in this outfit. And the end result, I am almost sure, will be exactly the same as before, --which is why I am finally writing this letter after getting my second "GOD DAMNED" note from you in two days. I have searched my soul, John, for a way to help you, --and I don't know what it is, any more than I did when you foolishly ran off with a man you now know was a Jew and whom you call a "fink", a "rat", --etc, --deserting me when I was in desperate shape. But I survived, and I can and will do it again while you are realizing your present batch of mistakes, --which you never do until they have hurt you.

You accuse me of "evading" my responsibilities, "running away" to vacations, --and now trying to "hide" in jail, etc. --If I am doing any

-3-

I'VE BEEN
BLAMED FOR
EVERYTHING
NOW

I SUPPOSE
THE FACT
THAT ~~YOU~~
YOU BUSTED
OUT ON YOUR
VACATION
GOT SOME
MONEY
HAD
NOTHING TO DO
WITH IT?

ducking, --it was from YOU. I have told you repeatedly how you HURT me, personally, with your childish sulking episodes of not speaking to anybody, or outright insults and insubordination to me, as the other day at the camp. AFTER WE FINALLY

Ever since Pierce got into the act, you have been hard at work making my life MISERABLE, with either the conscious or unconscious aim of forcing me to drive him out or make him ineffective.

WE
SHOULD
PREACH
WHAT WE
BELIEVE
NOT SOME
THING WE
CLAIM WE
ARE FIGHTING

You have had an utterly disproportionate FIT over some parts of Secitri Devi's article because of blue eyes, blond hair, etc, --on the grounds of deviationism. I have made it DAMNED, --GOD-DAMNED, (to use your language) clear to you, that I despise any effort to divide the White Race and will never tolerate any such thing. My whole life is dedicated to the opposite, after centuries of seeing our people destroying each other while the Jews are united.

Yet no amount of reassurance does you any good, you hound me, rail at me and make life an agony for me, --literally, --in spite of all pleas and requests.

I AM PART OF THE HQS - NOT
SEPARATE ENTITY

I
HAVE
ONLY
WHAT YOU
GIVE ME...
MATERIAL,
PERSONAL
MONEY...

You have NO organization at all, (I have little, but at least respect people who do and surround myself with them as much as I can and recognize my own failings.) You are, if that is possible, sloppier than I am, although you insanely insist that is not ~~true~~ true, and "you shouldn't SAY that, Commander". I myself, John Patler, saw the clippings I have entrusted to you, after they were carefully pasted up by Barbaba and Peggy, being WALKED ON, on the deck, at your place, and thrown all over the place, including your room. You insist that you never lose stuff, although you have lost all sorts of valuable things I have entrusted to you, time and time and time again, and any remonstrance by me brings either an outburst of temper from you, --or a sulking fit.

I have refrained from bringing all this to a head, hoping and praying I would find SOME way to HELP you escape the same thing you did last time.

But I am now convinced there is no more helping you, in the long run, from your emotional immaturity, than there is in helping Frank in the long run. All his life he has RUN from his problems in alcohol and geographical running. But at least he knows it and admits it and regrets it. You have a similar PATTERN in your life, --not alcohol, --but egotistical "certainty" that you know what to do, and by gathering a "gang" around you, you can enforce your will, --until it doesn't work, when you blow up and quit. IS IT EGOTISTICAL TO WANT TO FAULTLESSLY ADHERE TO THAT WHICH IS

I am now emotionally prepared for you to do exactly that. I no longer believe I can prevent it. To stop the wheels inside of yourself, you will have to face your fatal failure to ADMIT YOUR NEED OF HELP, and then, in the same spirit of honesty and humility in which you returned here, --accept help in getting and keeping organized, and mainly in suppressing your vile temper and sulking habits.

I will no longer try to deal with you by cajoling, pleading, reasoning and begging, however.

THIS
CMDR,
IS
REALLY
A ROTTEN
EXCUSE
FOR TAKING
A
VACATION--
BLAMING
IT ON ME.

The main reason I HAD to take a vacation is the hell you have been giving me--and I will now put an end to THAT.

You will, if you remain here, address me as "Sir" when you answer "yes" or "no", and otherwise demonstrate the respect you demand for yourself in your most recent "GOD DAMN" note.

You will cease every bit of ridicule of Dr. Pierce (such as using the name "Dr. Pussy"--you don't promote organization or discipline by conspiring with the men to violate it when you feel like it), and you will confine your criticisms of any and all Party officers to other officers--NOT TO THE MEN. That includes Lt. Ely, no matter what you think of him.

You are free to criticize me to any extent, until a decision has been made, as in the past, providing it is not done in temper or in an insulting manner. I welcome such criticism. In fact, before I got your "God Damn" note this morning, Col. Welch had already done a PROFESSIONAL job of convincing me that the march through Harlem was the wrong thing at this time, and I already called it off with the FBI yesterday afternoon.

In short, John, the "honeymoon" is over. I fought everything and everybody for you, when you were trying to rehabilitate yourself, because I like you personally and admire your abilities! You know, as a fact, that much of the big mutiny was over YOU. I will fight anybody FOR you, when that is right for the Party--and I have proved that.

Now, in spite of the fact that you will more than likely act as before, and leave me in a tough spot in the lurch, I am prepared to fight you before there will be any more of the disruptive hell you have been dishing out to me and the whole Party.

I have written many a memorandum to you and never given it to supposed you, hoping to avoid "trouble". But it's here--and I ain't going to duck it any more. This is GOING.

When you write about "evading" or "escaping" to a man who has stood up to all this hell for all these years--while you not too long ago took off in the night, exactly like Parrish and the other deserters--I suggest you plan your next exit with more honesty and dignity, and with better companions.

WHEN I TRY TO CONVINCE YOU, I AM A
"DUNK KID", "IMMATURE", A "SULKER"
AN "EMOTIONAL" FART. COL WELCH
DOES IT, IT'S ALRIGHT, OH? MY APPEAR
AGAINST THE MARCH WHILE WE WERE IN N.Y.

Heil Hitler!

R

CAN'T YOU
SEE, COMMANDER
YOU TOO ARE
FOLLOWING A
"PATTERN" THROUGHOUT
THIS LETTER.

Appendix 13

Commonwealth Exhibit No. 72 –
Letter from John Patler
to “Brother Booker” (Herbert Hillary Booker II)
May 22, 1967

Can. Ex. No. 72 ~~for~~

5-22-67

Dear Brother Booker:

Thank you once again for your kind letter and financial assistance. Also, the clippings were interesting.

You did the right thing in giving Brother Vidajevich my address. Although he still follow a hypocrite, he is still our brother and one of us. I hope he does write to me. Shortly, I shall complete the letter and send it out to interested parties. It will expose GLR as a liar and a hypocrite.

I was arrested last Wednesday in front of the WhiteHouse when I called the Peace Marchers a "Bunch of Traitors". Bailey and I are printing up a leaflet on it and I will ship you a small ~~box~~ batch to mail to newspapers in the Chicago area....and the police.

As soon as I get some real steady work, I am going to rent a small office here in Arlington. The rents are low. Then we can get a phone and we will be in business. I have already received a letter from Bill Sickles who is thinking of starting a political party. I wrote him and told him that all of us should get together and sit down and really found A TRUE WHITE PEOPLES PARTY. IT MAY SEEM IMPOSSIBLE AND USELESS - BUT...WE CAN DO IT I'M SURE... IF WE CAN ATTRACT THE RIGHT KIND OF MEN.

MY TYPEWRITER JUST BROKE DOWN.

TAKE CARE AND DO YOUR BEST
TO GET THAT BOX #. IT IS STRATEGICALLY
IMPORTANT.

WHITE POWER!

John Fatty

P.S.
LITTLE MARK
SAYS "HELLO"
-HE STILL REMEMBERS
YOU.
THE CONFEDERATE
MONEY IS AN ADVERT-
ISING GIMMICK
ALICE'S DAD USES.
HE GIVES \$1M
OUT BY THOUSANDS
TO CUSTOMERS.

Appendix 14

Commonwealth Exhibit No. 73 –
Letter from John Patler
to “Brother Booker” (Herbert Hillary Booker II)
May 3, 1967

12/14/67
Com. 84. No. - 73 *OK*
3 MAY 67

Dear Brother Booker:

Please forgive the delay in answering your letters. Your suggestions are excellent. I am a firm believer in being prepared for something way in advance. We must plan today for the "Army of Liberation", because it will be needed in the near future during the violent revolutionary era which is fast approaching.

I like the color combination (red and black). These are the colors of anarchy. I've always admired this combination.

Right now, I think that we should do things in phases. First, I believe we should form the ~~REVOLUTIONARY~~ WHITE POWER COMMITTEE. This committee will serve the following purposes:

1. Attract young people who are always the guts of any movement. And, most of the people who were active against the niggers were young folks.
2. The use of the name WHITE POWER will launch us into national prominence. It is exactly what we stand for and what we want and it does not have the kiss of death of the Swastika. The Swastika can eventually become a secondary symbol "for good-luck".
3. The ~~REVOLUTIONARY~~ WHITE POWER COMMITTEE can recruit leaders and activists for the foundation of a truly UNITED WHITE PEOPLE'S ~~REVOLUTIONARY~~ PARTY. It will serve as our stepping stone.

I believe that we must act NOW to grab the WHITE POWER slogan and idea and be associated with it.

We must not bite off more than we can chew. We must start up the ladder, one rung at a time. First we appeal to the kids. We become known as the advocates of WHITE POWER. White Power is associated with us. Next we form a central committee call a national meeting and form a WHITE PEOPLE'S PARTY. We are too small and unprepared for the founding of a political party at this time. We must work towards that goal. But as we proceed, we must never lose track of our purpose. We are a REVOLUTIONARY and MILITANT. Our appeal is to the WORKERS and the STUDENTS.

Because we do not have a real good symbol and there is a possibility that we will eventually come up with a good one, I think we should do as the European political parties do and use INITIALS. I am sending along several designs and layouts. Let me have your opinion on them.

Chris Bailey is with us and he can print us a newspaper (four pages). I am thinking about calling it WHITE POWER. We must work relentlessly to use the term White Power so that we become associated with it. We will all work together and contribute to the paper. If possible, do you think that you can justify the news stories for us with your typewriter? It doesn't have to be fancy. We can send you the stories, after I have edited them and then you can type them up for us, send them back and I can get it printed through Bailey.

In Arlington we have an instant Printing service by Cooper Treat. I can get just about anything printed very cheaply. As soon as we get an address, I'll get the letterheads printed and on the way to you. Also, I think we should take

out a box in Washington, D.C. But Chicago should be our central headquarters. Can you rent a box in the name of the ~~White~~ White Power Committee and list as others who can receive mail: W.H. Booker, II, John Patter, and the United White People's Party. Is there anyway that you can notify the post office that you need a box where you can receive mail in any name? It might become necessary for us to use different names of ad hoc committees from time to time.

I will also like to print a special leaflet to attract attention. The leaflet will say something like: "The color of your skin is your uniform in the coming race war between black and white." This will be for mass distribution. I can get white power posters printed with our symbol or initials with the help of Brother Bailey. It may be necessary for me to skoot up to Chi for a couple of days during a hot time to speak in the parks. What ever we do, Brother, we must be sure to do it in an organized and intelligent manner so that we do not waste ourselves or throw ourselves to the wolves. You and I have the guts. Lets use it to our advantage.

Brother Bailey and I attended a "Be-in" in Washington to see what it was all about. Many girls dressed up in silly outfits were there. Lots of guys and some members of the HUNS motorcycle club. We made friends with some of them.

Brother Bailey and I are going to picket the white house on May 17th when the peace creeps hold a big demonstration. If we make out, you will read about us in the papers. I'm thinking of carrying either of two signs: KILL the peace creeps! or: Get our troops out of viet nam, get the A-Bomb in! There are dozens of events occurring each month that we can attend and interrupt and get attention for our movement. - WITHOUT HAVING TO GO TO JAIL!

Right now, I am working 4 or 5 hours each nite at a Greek Restaurant. I'm doing this until something better comes along. I go for an interview before a committee to get into the praters union and get a good night job. In the meantime, I am planning on our political futures. If we play it right, Brother Booker, we can climb right to the top and lead our people from an idealistic viewpoint and not from selfish and egotistical reasons like old man Rockwell.

I am going to invite Brother Blair and Dave Hughes to join us as members of the SWPC. Another thing: After a while, we will be able to tell which recruits have got potential and can be fully trusted to do just about anything. Such men can become members of our elite group "The White People's Army of Liberation". This army group must be able to match the black nationalists and commies in terrorism and brutality. The must be trusted to carry out any mission no matter what the consequences.

Write soon. And again, forgive the delay. White Power!



John
Brother John

"W" STANDS FOR
WHITE. EASY
O DRAW. EASY
O REMEMBER.



P.S. I CAN
GET WHITE POWER
BUTTONS. CAN YOU
SEND ME THE CHI
PHONE DIRECTORY?
(YELLOW PAGES).

(OVER)

(JUST SOME VERY ROUGH IDEAS
OF WHAT I'M WORKING ON).

Appendix 15

Commonwealth Exhibit No. 74 –
Letter from John Patler
to “Brother Booker” (Herbert Hillary Booker II)
August 9, 1967

Com. Ex. No. 74 ~~for old.~~

9 August 1967
Thursday 0905

Dear Brother Booker:

Received the good news about the Post Office Box rental for the White Power Committee. Good Work!

I am working on a rough outline for a small book I am writing to be called: "We Want White Power". I am dedicating the book to my friends and comrades and in it I will set forth my views on the present race problem and what I believe will develop from it in the future.

Dr. Ed Fields of the NSRP wrote me a nice letter. He asked for my advice on winning the masses. I have some very good ideas to give him ...even some revolutionary ideas. I have seriously thought about joining with them if they would first make certain changes after reading my ideas and re-organize their Party so that it fits the true ideal of a genuine White People's Movement. They have the set-up and the organization...what they need is a few revolutionary changes and some strong militant guidance and they will be on their way.

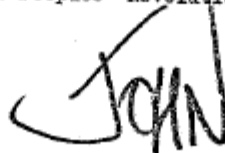
The NSRP is holding a convention in Jacksonville, Florida on Aug. 25, 26, and 27th. I may go there for the convention. Joe Carrol lives in nearby Maryland and maybe I can get a ride with him or someone else who owns a vehicle and is traveling by car.

I wrote a letter to Harry Blair. Hope he answers me. I guess he must be busy working. I told him that if I do attend the NSRP convention, that I would drop in to see him on my way down there. It sure would be good to see old Harry Blair again. He is a true comrade, and a true revolutionary.

Annette goes home this Sunday. On the way down, Alice and I will go on to visit her mother at her farm in Staunton. It is really peaceful down there. A man can think out there in the quiet of the country. Zorba is down there having lots of fun. He is really big now. Do you remember him...how small he was? He is a beautiful creature...a wonderful dog.

Take care and write soon. Did you fill in and send in those applications?

Long Live White Peoples' Revolutionary POWER!!



John Fatler
"Unemployed Revolutionary"

Appendix 16

Commonwealth Exhibit No. 75 –
Letter from John Patler
to “Brother Booker” (Herbert Hillary Booker II)
April 19, 1967

12/14/67
Can. Ex. No. - 75 *JNR*
for [illegible]

4-19-67

Dear Brother Beeker:

Thank you for your nice letter and the lettuce. You are indeed a real friend. I am still looking for work. In the meantime, I am picking up a few dollars doing some art work for a right-winger who runs a small advertising agency.

I've moved in with Alice and her parents. The box where I receive mail does not have to be in care of C.A. Bailey...just write to me in care of the box.

I deeply appreciate your offers, but for now, I am going to stick in the Washington area. I plan to go to art school very shortly and work at nights. I will most definitely start a group and it will be a real good thing....nothing like the personality cult built up by GJR.

I am also going to write an exposé on his vile habits and circulate it to all officers. It will be an answer to the charges he has made against me which contain some of the most outrageous lies you ever read. What he has done to me is totally irresponsible and dishonorable.

Lets be sure to keep in touch and someday we will get together and work for the survival of our people in a truly idealistic way.

White Power!

Patler
Brether Patler

Appendix 17

Defense Exhibit No. I –
American Nazi Party Office Memorandum
July 29, 1966

147101
Def. Sp. No. ~~1~~ *for Ed.*
I MEMORANDUM

CONFIDENTIAL

TO: Commander Rockwell

DATE: 7/29/YF77

FROM: Maj Koehl

SUBJECT: Administrative Reorganization

I find it impossible to continue doing effective work under the present organizational set-up of the Party. Right now I feel about as useful as a typewriter with the keys all jammed up.

If I am expected to carry out even half of my responsibilities, there are going to have to be some drastic changes:

- (1) I am going to have to get some serious, qualified help. At the moment I have no one. I absolutely NEED one other person, who is willing to put in a 10-12 day regularly. I could use two such persons.
- (2) I want to put such person(s) on a regular salary, so I have some tangible control over their performance.
- (3) I am going to have to be allowed to separate the administration of the Party from the Stormtroop operations. As long as the two are lumped together, it is impossible to really achieve anything in either area.
- (4) We are going to need an office physically separate from the Barracks at the earliest possible date. It is impossible to try carry out a serious administration in a Trooper's Barracks.
- (5) I am going to have to have a reasonable budget to enable the purchasing of such supplies and equipment necessary to carry out the functions to which I have been assigned. (I would expect such funds to come out of those dues and other fees I am directly responsible for raising.) It is impossible for me to perform effectively and efficiently if I have to spend my time constantly begging for such necessities as bond paper, postage, typewriter ribbons and card file cabinets. If I am expected to do PROFESSIONAL work, I need some kind of budget.

These are the bare minimum preconditions for me to keep operating. Otherwise I am just wasting your time and mine, and not really helping the Cause.

Workwise, I am not even able to keep my head above water anymore. I am actually going BACKWARD. I am not really accomplishing anything, but going around in one big circle. I can't continue like that. I am

Appendix 18

Defense Exhibit No. J –
Letter from George Lincoln Rockwell to Matt Koehl
April 13, 1967



Det. Ep. J for L.L.

GEORGE LINCOLN ROCKWELL

Major Mat Koehl
Arlington,
Virginia

13 April, 1967

Dear Major:

The recent series of communication foul-ups have been too serious to ignore. The one with the camper will cost us at the very LEAST three hundred bucks, --and a hard time from Dallas, --rightly, --if they hear of it all.

There was the business with Barbara and the tape, the business of the IRS, --(which I just straightened out on long distance, at a lot more cost, and which I found out could have been taken care of with ONE telephone call to Richmond back there).

*L 32
SLP*

In the last batch of mail, I got a letter from the University of South Carolina, more than a WEEK after I should have made arrangements for transportation, plans, etc. --and I had to change everything, with more long distance calls, etc--and more \$\$\$ out the window. One mention of this on any of the many calls back there would have saved a lot here.

I regret sounding like women, who always bring up stuff from the distant murky past when they are angry. But I am not angry, --just distressed, --and hoping we can do whatever may be necessary to insure that SIMPLE communications on vital ---and EXPENSIVE ---affairs are improved immediately. Consequently, I am constrained to mention the same kind of thing which happened a year ago, when I was in Chicago and Wisconsin or someplace near wanted a speech, and you never told me about it until I was clear back there, and had to go back west at more expense.

It's the PATTERN which worries me here, Matt. I do not understand it, as you are the most methodical and orderly guy I ever met.

This communication business when I am so helpless running around the nation simply MUST be improved, and I must ask you to take steps to see that what I ask you to do on the phone gets put into a log or some kind of writing, and gets DONE. We cannot afford the cost of such mistakes.

COMMANDER • AMERICAN NAZI PARTY • POST OFFICE BOX 5505 • ARLINGTON • VIRGINIA • U.S.A

I hope you will not take offense at this criticism.

You have very properly (and cleverly) pointed out to me the inappropriateness of some of my language, --and I have taken action to correct it, --appreciating the reminder. The Surveys have hit me with the same thing, and you are both right.

Now I hope you will take this in the same spirit, and see that my important messages and orders are WRITTEN DOWN from the phone, --delivered to the appropriate parties or action taken, and some kind of a record kept thereof.

Further, --PLEASE SEE THAT INFORMATION BEARING ON MY TRAVELS WHICH YOU GET IN THE MAIL THERE IS CALLED TO ME ON THE PHONE IMMEDIATELY.

Things are going very well, and when we get this trial in Chicago beaten, (I hope), --we'll be rolling as never before. I'm gathering in more than \$2,000 in the next week or so speaking, and the trend is UP!

I'll soon have the income to get you the help you have repeatedly asked for, but in the meantime, you've got the most dependable kid in the outfit, and I hope we can straighten out these foul-ups with no further difficulty.

Heil Hitler!



Appendix 19

Defense Exhibit No. S –
Teller's receipt from F.N. Bank
August 25, 1967

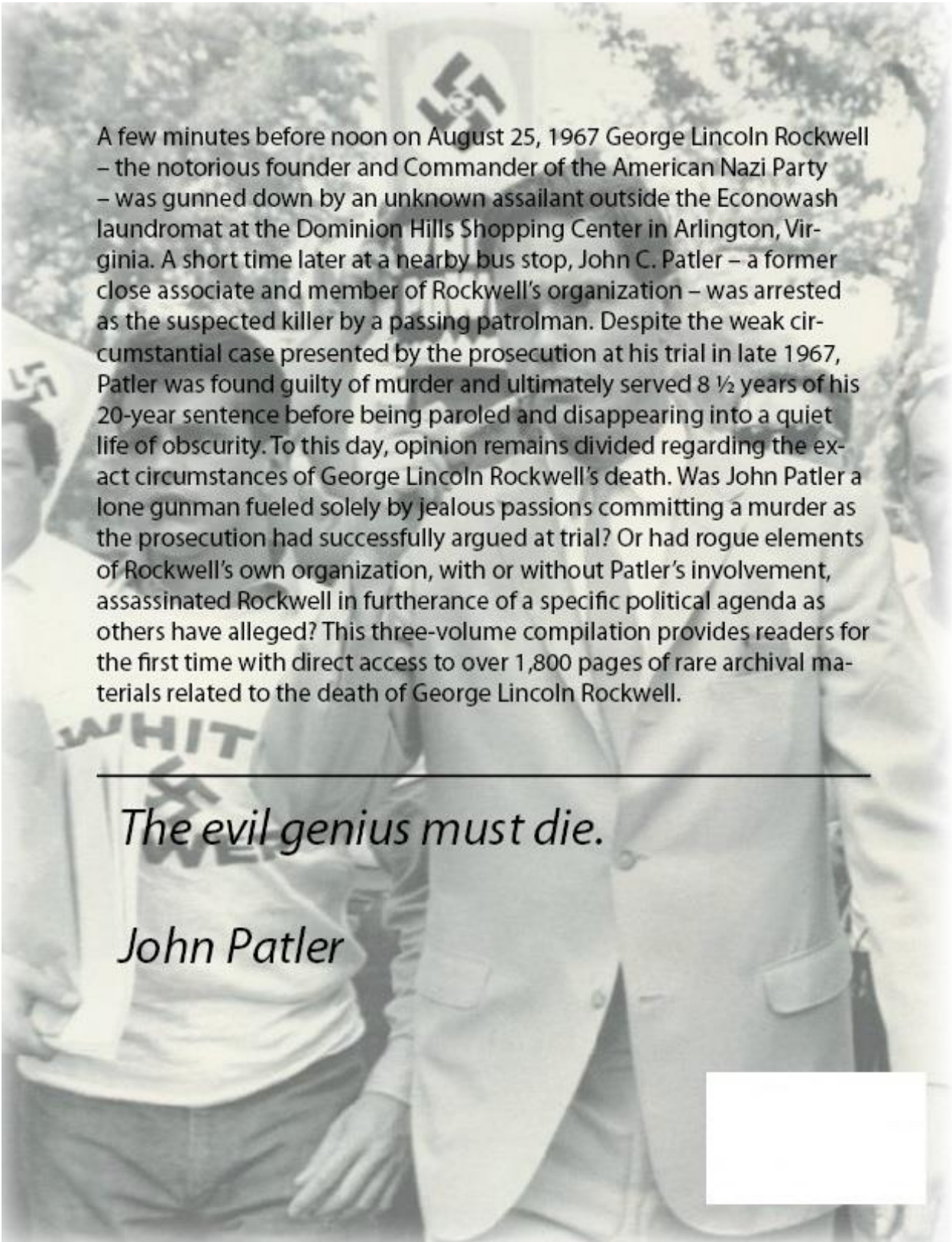
12/12/67 *OUR*
Def. Ex. S *for Oct*

.00 *
50.00
1 25.86
1 63.33
50.00
10.00
40.00
25.00
91.22
1 85.46
1 29.34
50.00
3 85.05
1 62.05
2 22.28
1 78.78
40.00
15.00
84.60
2 50.00
1 45.44
1 8.75
1 44.22
20.00
2,586.38 *

TALLER #2

AUG 25 '67

E. N. R.



A few minutes before noon on August 25, 1967 George Lincoln Rockwell – the notorious founder and Commander of the American Nazi Party – was gunned down by an unknown assailant outside the Econowash laundromat at the Dominion Hills Shopping Center in Arlington, Virginia. A short time later at a nearby bus stop, John C. Patler – a former close associate and member of Rockwell's organization – was arrested as the suspected killer by a passing patrolman. Despite the weak circumstantial case presented by the prosecution at his trial in late 1967, Patler was found guilty of murder and ultimately served 8 ½ years of his 20-year sentence before being paroled and disappearing into a quiet life of obscurity. To this day, opinion remains divided regarding the exact circumstances of George Lincoln Rockwell's death. Was John Patler a lone gunman fueled solely by jealous passions committing a murder as the prosecution had successfully argued at trial? Or had rogue elements of Rockwell's own organization, with or without Patler's involvement, assassinated Rockwell in furtherance of a specific political agenda as others have alleged? This three-volume compilation provides readers for the first time with direct access to over 1,800 pages of rare archival materials related to the death of George Lincoln Rockwell.

The evil genius must die.

John Patler